

1 A. Yes.

2 Q. You said that his breathing also changes.
3 Does he start breathing faster the closer he gets to
4 an object, he sort of gets excited?

5 A. Yes.

6 Q. And a posture change, can you explain to
7 me what a posture change is?

8 A. Instead of running, he may stop, his
9 stance will become much like that of a pointing bird
10 dog that becomes sort of statuesque sometimes. It
11 varied depending upon what you were looking for with
12 him.

13 Q. Okay. On a track, for instance, what
14 would often be Spike's change in posture as he would
15 approach a subject?

16 A. Typically he would stop, he would begin
17 looking around and then he would begin trying to
18 work the scent that he was getting.

19 Q. During a track, would he also slow down at
20 this point, typically?

21 A. Yes.

22 Q. Would his tail start wagging at all?

23 A. No, I don't think I've noticed that.

24 Q. Okay. He just sort of locks up more like
25 a pointing bird dog perhaps?

1 A. For a short time.

2 Q. How short of a time are we talking about?

3 A. Seconds.

4 Q. Any other alerts, indicators that Spike
5 would have when you're on a track?

6 A. I would always watch him to see if he were
7 going high. Him going high, to me, would indicate
8 that someone would be up high at first glance, but
9 it was never reliable, depending on the wind.

10 Q. And by the dog going high, what do you
11 mean going high?

12 A. Leaving his front feet. He would stand
13 straight up and sniff up into the air.

14 Q. He'd sort of jump up on his hind legs,
15 then, to get higher up in the air column?

16 A. Correct.

17 Q. How does your dog indicate to you that
18 he's found -- I know there's some debate here about
19 human odor or the scent disturbance on the ground
20 when he's doing a track. How does he tell you that
21 he's on a track?

22 A. His head is down, he's not circling and
23 he's moving very briskly, very fast.

24 Q. Okay. And by fast, are we talking a swift
25 walk, are we jogging, are we running?

1 A. I had to run with him.

2 Q. So he would go very quickly?

3 A. Very fast.

4 Q. Would that be almost all tracks, Spike
5 would be running when he's on a track?

6 A. Yes.

7 Q. When you were doing your training in
8 regards to tracking with Spike, were you trained to
9 just stay with the dog? For example, if the dog's
10 running on a track, were you just trying to stay
11 with the dog if he's running or would you slow the
12 dog up? I mean, how does that relate to your
13 training, how were you trained to track?

14 A. The general rule was not -- you didn't
15 train specifically anything, it was training per the
16 dog. Each dog tracks at a different pace. None of
17 them are the same. To slow the dog down, you may
18 create the impression upon the dog that you're
19 disciplining him. So it was to try to work at the
20 dog's pace; however, if you were not in shape enough
21 and couldn't go as fast as him, you could slow him
22 down slightly.

23 Q. How many dogs track, in your experience,
24 as fast as Spike? I imagine that would wear you out
25 pretty quick running to keep up with a dog like

1 this?

2 A. There are quite a few. I couldn't give
3 you an exact number.

4 Q. Do most dogs track at a running pace or do
5 most dogs track at a slower pace?

6 A. That would, again, depend on the type of
7 training that you're talking about for the tracking.

8 Q. Out of all the training that you did with
9 your dog in the 2007/2008 time frame, how much of
10 that training was devoted to tracking?

11 A. The majority of it.

12 Q. And why was that?

13 A. It was something that was easy for me to
14 do at work while I was on duty. It was good
15 exercise not only for him but for me also. In the
16 dead zones at work when we just had nothing to do,
17 it was a good time to get out of the car and get
18 moving around.

19 Q. When Spike was deployed in the field, was
20 he most often deployed in a track situation, a drug
21 search situation? Was there anything he did more
22 than anything else?

23 A. Drug searches.

24 Q. So when Spike was deployed, most of the
25 time it was for a drug search?

1 A. Absolutely.

2 Q. And most of your training was for a track,
3 correct?

4 A. Correct.

5 Q. Is Spike weak or strong in any particular
6 area, meaning drug searches, tracks, building
7 searches?

8 MR. WEISENFELDER: We're still talking
9 what time period?

10 MR. BRANNON: 2007/2008.

11 A. No, Spike was very good at most everything
12 that he did about equally.

13 Q. I know we've used a few terms, dog handler
14 and dog trainer. Is there a difference between the
15 two?

16 A. Yes.

17 Q. Tell me what that difference is.

18 A. A trainer is someone who's been through a
19 prescribed number of training hours and has
20 experience in training dogs for a certain number of
21 hours. A handler is someone who has been trained by
22 that person and then certified to be a handler.

23 Q. And a handler is who?

24 A. A handler can also be a trainer.

25 Q. Okay. And yourself, during your

1 employment with Springboro, were you only a handler?

2 A. Yes.

3 Q. Have you always only been a handler?

4 A. Yes.

5 Q. You've never done any work as a trainer
6 other than maintenance training with Spike, correct?

7 A. No, at Lynnwoods you were required to work
8 two dogs, your own and assist in the training of
9 another one. So I did act in the role of a trainer,
10 although I was not certified as a trainer. It was
11 not an interest of mine.

12 Q. Okay. So you are certified as a trainer?

13 A. I was not certified as a trainer. It was
14 not an interest of mine.

15 Q. I understand. But that was part of your
16 initial training, correct?

17 A. Correct.

18 Q. Now, when you're training a dog like
19 Spike, are there distractions that you throw in as
20 part of the training to try and throw the dog off?

21 A. Yes.

22 Q. Give me some examples of that in a
23 tracking situation.

24 A. Tracking?

25 Q. Yes.

1 A. Cross tracks, animal odors, food, just
2 about anything you can think of.

3 Q. Okay. And in a situation where Spike is
4 on a bite and you're doing training, what types of
5 distractions are thrown in to throw off the dog when
6 he's actually on a bite?

7 A. They use bamboo sticks that aren't
8 harmful, they just create the impression to the dog
9 that he could potentially be hit with a stick,
10 although it's not, it doesn't cause the dog any
11 pain.

12 Q. So they actually strike the dog with a
13 bamboo stick knowing that it's not going to harm the
14 dog, but it makes a loud crack?

15 A. It makes a loud crack, yes. There is also
16 the decoy, wrapping the dog and a lot of yelling.

17 Q. Okay. When Spike is on a track and has
18 indication or alerts, are his changes in behavior
19 such that other people would recognize them as well,
20 meaning not just you as the handler with special
21 knowledge, but other people would be able to
22 recognize that Spike is changing in his behavior and
23 that something is going on?

24 MR. WEISENFELDER: Objection. Go ahead.

25 A. Possibly. If he were going high, they

1 would definitely notice that. But other than that,
2 unless you're trained to know your individual dog,
3 you don't know what the indicators are for that dog
4 when he's alerting.

5 Q. And you mentioned a term how well you know
6 your dog. During the first incident that this case
7 is about on October 21, 2007, you know, just prior
8 to that, how well would you say you knew Spike and
9 Spike's behaviors?

10 A. Fairly well.

11 Q. Fairly well or very well?

12 A. Fairly well.

13 Q. And prior to the Gemperline incident on
14 October 11, 2008, how would you say that you were
15 recognizing Spike's behavior?

16 A. Still fairly well.

17 Q. And by fairly well, I take it you imply
18 that you miss on occasion some clues or changes in
19 behavior; is that correct?

20 A. Correct.

21 Q. What types of things would you often miss
22 during that time frame?

23 A. The direction that he's indicating to in
24 terms of the wind, the direction he may be going,
25 the object at the end of the track. The training

1 track you had laid may be somewhere else, depends on
2 the change in wind. You may be five feet off the
3 track and not know it. It's all variables that only
4 a scientist could probably explain the certain
5 details of.

6 Q. Would you attribute this to the fact that
7 Spike wasn't acting reliably or were you just not
8 picking up on clues?

9 A. I would attribute it to the fact that he
10 is an animal and I have no way to read his mind.
11 It's virtually impossible to detect within
12 100 percent everything that your dog is displaying
13 to you.

14 Q. Was there anything that you could have
15 done prior to the October 21, 2007 date that would
16 have helped you become at reading your dog or be a
17 better handler that you had not done?

18 A. No, not that I'm aware of.

19 Q. During the course of training, has your
20 dog, Spike, ever failed to locate a person?

21 A. Yes.

22 Q. Why would that have been?

23 A. Cross tracks. I don't know what the
24 reasoning exactly was, I couldn't tell you.

25 Q. There would just be situations that you

1 would lay out that he couldn't solve the puzzle
2 then?

3 A. Yes.

4 Q. And during the course of using the dog in
5 the field, has the dog ever failed to locate a
6 person?

7 A. Yes.

8 Q. And why would that have been?

9 MR. WEISENFELDER: Objection. Go ahead.

10 A. I have no idea.

11 Q. Would it have been simply because the
12 subject wasn't there any longer, would it have
13 been -- I've read some of your deployment reports
14 and some indicate that, you know, maybe a perimeter
15 wasn't set up and the person got out that way and
16 sometimes you've later learned that, you know, you
17 were close but the person had fled in a car?

18 A. Certainly, of course, perimeter, vehicles,
19 and then it could be that he's a dog and he's just
20 not having a good day and he has no way to tell you
21 that. Any number of things could come into play.

22 Q. How would you compare the Springboro
23 Police Department's and your canine training program
24 as it compared to other agencies here locally,
25 meaning the Warren County Sheriff's, Montgomery

1 County Sheriff's training programs?

2 MR. WEISENFELDER: Objection. Go ahead.

3 Q. If you know?

4 A. Are you referring to maintenance training
5 or original training?

6 Q. Maintenance training, let's start there.

7 MR. WEISENFELDER: Same objection. Go
8 ahead.

9 A. Maintenance training, I would say I did
10 twice for me personally what I had to do. I exerted
11 twice the effort.

12 Q. Does that mean you spent twice the time
13 doing maintenance training than what you were
14 required to do?

15 A. No, that's not what that means.

16 Q. Tell me what that means when you say you
17 exerted twice the effort.

18 A. Instead of laying a 300-yard track in just
19 grass, I was willing to run myself through
20 thornbushes, across creeks, hard surfaces, soft
21 surfaces, and make sure that he was familiar with
22 tracking in all different areas instead of just the
23 standard, I'll go out and lay a little track and be
24 done with it.

25 Q. Okay. So that is how you would say your

1 training differentiated from other agencies, is you
2 personally would set up harder scenarios for your
3 dog during training?

4 A. Correct.

5 Q. But you would not spend any additional
6 time -- would you spend more or less time than,
7 let's say, the Warren County Sheriff's or the
8 Montgomery County Sheriff's in training their dogs?

9 MR. WEISENFELDER: Objection. Go ahead.

10 A. I don't know what Montgomery County
11 Sheriff's Office spends in terms of training their
12 dogs, and the Warren County Sheriff's Office does
13 not have a tracking dog.

14 Q. Okay. But they do have dogs, correct,
15 that you said you trained with?

16 A. A narcotics dog.

17 Q. How much time would they spend training
18 their tracking down -- or, I'm sorry, their
19 narcotics dog each week?

20 A. I believe it was about four hours every
21 Wednesday.

22 Q. Would you spend more or less time than
23 that training Spike?

24 A. I would obviously have to spend more time
25 because I had a dual-purpose dog. I had to train in

1 the patrol section and the narcotics section.

2 Q. Okay. And once again, all of that
3 training would be documented, then, in your canine
4 unit training log?

5 A. Correct.

6 Q. Can your dog indicate on command, meaning
7 if you command it to alert to something, will it
8 alert on something?

9 A. No.

10 Q. Have you maintained Spike's training since
11 he retired?

12 A. To a slight degree. I don't have access
13 to the drugs that we had before, but I do still run
14 tracks occasionally.

15 Q. And occasionally means how often?

16 A. Once or twice a month.

17 Q. Back in the time period 2007/2008 when
18 these incidents took place, did you reward your dog
19 when it locates a human on a track? For example,
20 when it locates a person, would you reward your dog?

21 A. Yes.

22 MR. WEISENFELDER: Are we talking about
23 training or an actual track?

24 MR. BRANNON: Training.

25 A. Yes.

1 Q. Okay. How would you reward your dog?

2 A. In training, I reward him with laying a
3 toy at the end of the track.

4 Q. What type of toy would you give him?

5 A. A plastic tube.

6 Q. Now, in service when your dog is
7 performing a track in the field, would you reward
8 him when he locates a person?

9 A. No. Well, let me stop there. It depends.

10 Q. What would it depend on?

11 A. What type of track you're referring to.

12 Q. How many different types of tracks are
13 there?

14 A. There's a missing persons track and then
15 there is a fugitive track.

16 Q. What is the difference between a missing
17 persons track and a fugitive track?

18 A. A missing persons track, there is no
19 chance of a bite. You have lights out. You're not
20 being tactical. You have a very, very short line,
21 lighting up the entire area around you and you do
22 carry a toy with you so if you do find the person,
23 you throw the toy in front of the dog.

24 Q. Okay. And that's prior to -- why would
25 you throw the toy in front of the dog at the end of

1 the track, is that before or after you locate the
2 person?

3 A. After.

4 Q. Would you throw the toy in between the
5 person and the dog?

6 A. Yes.

7 Q. Would that be so that the dog does not
8 become oriented on the person?

9 A. A mixture of both; the dog is rewarded and
10 does not become oriented on the person.

11 Q. Now, at the end of a fugitive track when
12 you find a person, what would you do?

13 A. Praise the dog.

14 Q. And that would be his reward?

15 A. Yes.

16 Q. You'd just say, good dog, something like
17 that?

18 A. He would be very highly praised, yes.

19 MR. BRANNON: Off the record real quick.

20 (OFF THE RECORD)

21 BY MR. BRANNON:

22 Q. Mr. Clark, I'm going to take you back to
23 Exhibit S3 there. At the time that your training
24 certificate with the State of Ohio lapsed, were you
25 aware it lapsed?

1 A. Yes.

2 Q. Okay. How were you made aware of that?

3 A. By looking at the certificate.

4 Q. Okay. When did you first become aware it
5 had lapsed?

6 A. I knew that it was approaching and I
7 looked at the date.

8 Q. Why did it take you until September to get
9 that renewed?

10 A. I believe I've explained that. The two
11 surgeries to Spike, also the surgery for myself, the
12 vet would not allow him to do any type of work
13 whatsoever. He wasn't allowed out of his crate
14 other than to use the bathroom and eat for an
15 extended period of time. And he was not allowed to
16 work at all after that for an additional amount of
17 time.

18 Q. Okay. You also mentioned the difference
19 between a missing persons track and a fugitive
20 track. Can you describe for me what a fugitive
21 track is?

22 A. A fugitive track is when a person has
23 committed an offense, most likely a felony or a
24 crime of violence, and then fled the scene and is
25 actively evading the arresting officers at which

1 point, if I am utilized, I would begin it as -- a
2 fugitive track is also a tactical track. It's used
3 without leaving flashlights on to maintain your
4 cover and it's used with the dog allowed a lot more
5 line to work with.

6 Q. In regards to Sam Campbell, on 10/21/07,
7 you deployed canine Spike, correct?

8 A. Correct.

9 Q. And was that on a track?

10 A. Yes, it was.

11 Q. Would that have been a missing persons
12 track or a fugitive track?

13 A. A tactical fugitive track.

14 Q. Is there a difference between a plain
15 fugitive track and a tactical fugitive track?

16 A. They're one in the same.

17 Q. And in regards to Chelsie Gemperline on
18 10/11/08 when you deployed Spike on a track, was
19 that a missing persons track or a fugitive track?

20 A. Fugitive track.

21 Q. Okay. Have you ever permitted Spike to
22 bite a person during training when it locates a
23 human during a track?

24 A. Yes.

25 Q. Okay. Under what circumstances would you

1 permit him to attack a person in training on a
2 track?

3 A. Spike has never attacked anyone. He does
4 not attack, he bites, and that is what's known as an
5 apprehension. I don't use the term attack. That's
6 more associated with pit bulls. However, he would
7 do apprehension tracks. On occasion, we would use a
8 man, but that was very rare. Normally it was with a
9 toy at the end.

10 MR. WEISENFELDER: Usually what?

11 A. With a toy at the end.

12 MR. WEISENFELDER: Okay. Just keep your
13 voice up.

14 Q. So understanding your terminology, and I
15 know that you speak a dog language that I'm not as
16 familiar with, an apprehension would be considered a
17 bite. And you do not use the terminology "attack"
18 when a dog bites, but you call it a bite, correct?

19 A. It is exactly what it is, it is a dog
20 bite. However, it is not a mauling or an attack and
21 there's no anger associated with it for the dog.

22 Q. Okay. In your training sessions in which
23 you permitted Spike to bite a person during a track,
24 how many times did that occur, approximately?

25 A. I don't know. I could tell you it was

1 very rarely.

2 Q. In Spike's entire career with you, how
3 many times would you estimate?

4 A. Ten would be a high, at the highest number
5 I could think of.

6 Q. At the end of a track, would the person do
7 something to provoke the bite or was it Spike's
8 natural response to bite at the end of a track in a
9 training scenario?

10 A. Both. We trained both. We trained for
11 passive suspects and for nonpassive suspects.

12 Q. Okay. In a nonpassive suspect, would
13 Spike bite at the end of a track --

14 A. There again --

15 Q. -- during his training?

16 A. There again, you would also have to lay
17 out more of the circumstances around that in order
18 for me to answer that question.

19 Q. What additional circumstances would there
20 be that would determine whether or not Spike were to
21 bite at the end of a track during a training
22 session?

23 A. The lighting condition, whether it's day
24 or night, whether I can physically see and make
25 contact with that person visually and verbally, and

1 if the person is actively, at the time they are
2 found, continuing to flee, if they run at that
3 point, if they do not comply.

4 Q. Okay. So let's set up a training scenario
5 where it's daylight and you send Spike on a track to
6 locate a person and he finds that person. Would he
7 then bite or apprehend that person at the end of
8 that track in the training scenario if there the
9 person is passive?

10 A. I'd have to ask if I've seen -- if I know
11 that the person is there or not, have I seen them?

12 Q. Okay. Well, let's assume that you do not
13 know the person is there. Would Spike attack?

14 A. He would apprehend.

15 Q. He would bite. I'm sorry, I used the word
16 attack again. So he would bite if you did not see
17 that person, correct?

18 A. Correct.

19 Q. If you did see that person, would Spike
20 bite?

21 A. Only if I allowed him to do so.

22 Q. Why would he only bite if you allowed him
23 to do so?

24 A. Because if I saw someone and knew that
25 they were there beyond a doubt, I would stop and

1 order them. If they did not comply at that point or
2 they continued to resist by evading arrest, then he
3 would be allowed to apprehend them.

4 Q. Okay. Would it change at all if the
5 scenario was at night --

6 A. Yes.

7 Q. -- under these same circumstances? Okay.
8 Let's go through this under a night scenario and you
9 saw the person, would Spike bite?

10 A. No, I would stop him short. Again, the
11 same thing; if I know someone is there, I stop and
12 shout warnings.

13 Q. Okay. If you did not see the person,
14 would Spike bite?

15 A. If he was close enough to them to bite
16 them, yes, he would.

17 Q. Okay. So the only way that Spike would be
18 prevented from biting a person during a track would
19 be if you physically saw the person and restrained
20 Spike from biting them, correct?

21 A. Correct.

22 Q. Otherwise, Spike would bite the person on
23 the track?

24 A. Yes.

25 Q. So in Spike's training, if he came to a

1 person at the end of a track, he would bite that
2 person unless you stopped Spike from biting that
3 person?

4 A. Yes.

5 Q. So under every tracking scenario in
6 training or in the field, you would expect Spike to
7 bite the person at the end of the track if you did
8 not see that person and were able to restrain Spike?

9 A. In a tactical or what some refer to as a
10 fugitive track, absolutely.

11 Q. How would Spike know if it's a missing
12 persons track or a fugitive track?

13 A. He doesn't.

14 Q. So how would Spike not know to bite a
15 person in a missing persons track?

16 A. That would be why we would take the
17 precautions that I outlined for you, a lot of light,
18 more than one back-up officer. They also have their
19 lights on and he is not 20 feet out in front of me.

20 Q. So if I'm understanding you correctly,
21 under a missing persons track, you can change the
22 environment to make it safer for the person that
23 you're looking for, correct?

24 A. Correct.

25 Q. Is there any reason why you could not do

1 that in a fugitive track, create those same
2 conditions?

3 A. That you would make yourself a very large
4 target.

5 Q. Meaning because you were fearing attack
6 from a subject, potentially?

7 A. Yes.

8 Q. For example, in your training Spike and
9 how Spike would react in a field, anytime you would
10 send Spike, just so we're clear on this, on a track,
11 you would expect a bite to occur unless you,
12 yourself, physically prevented Spike from getting to
13 that person, correct?

14 A. If I stopped and posted myself up, he
15 would not be afforded the opportunity to apprehend
16 the person, no.

17 Q. Okay. But that's the only way a bite
18 would not occur is if either -- if he found a
19 suspect, if Spike found that person that you guys
20 were looking for on a track, the only way that a
21 bite would not occur would be if you physically
22 restrained Spike from biting that person?

23 A. No, I could down him. If I knew the
24 person was there, I could down him and that would
25 not be physically restraining him. But it was often

1 at times better to physically restrain him because
2 he would then bark more and be more excited and the
3 person would be more apt to give up and listen to
4 me.

5 Q. Okay. A down command, is that a verbal
6 command?

7 A. Yes.

8 Q. And I take it that the dog will just lay
9 down there and await a further command if you give
10 that command?

11 A. Yes.

12 Q. What is the command for Spike to lay down?

13 A. Auf, A-U-F.

14 Q. So during the course of a track, you've
15 described for me two ways to prevent Spike from
16 biting a person that he sees on a track. One is if
17 you physically restrain him and stop him from biting
18 the person and the other is if you order the dog in
19 a down position, correct?

20 A. Correct.

21 Q. Are there any other scenarios that you can
22 think of in which Spike would not bite a person on a
23 track if he found that person?

24 A. Anytime a person verbally gave themselves
25 up, they did not get bit.

1 Q. Okay. Why would a person standing up --
2 is that only because you would then restrain the dog
3 or order the dog not to -- you'd either order the
4 dog down or restrain the dog from getting to that
5 person?

6 A. Either one of those two, yes.

7 Q. Okay. But any other time you could expect
8 a person to get bit?

9 A. Correct.

10 Q. Prior to the incident involving Sam
11 Campbell, how many hours of training had your dog
12 Spike had, do you know?

13 A. I've never tallied them up.

14 Q. Prior to the Gemperline incident, do you
15 have any idea how many hours of training your dog
16 had?

17 A. Again, I've never added them up.

18 Q. Has anybody at your department ever
19 tallied up or added your training hours, any
20 supervisor or anything like that?

21 A. Not that I'm aware of.

22 Q. Do you know whether or not Spike was
23 trained as a bite-and-hold dog or a bark-and-hold
24 dog?

25 A. At the beginning he was trained as a

1 bark-and-hold dog, and then somewhere towards the
2 end, the last year, we were transitioning to a
3 down-en-route, which is noted in my training
4 records.

5 Q. Okay. What's a down-en-route, is that a
6 bite-and-hold dog instead of a bark-and-hold dog?

7 A. The theories you would have to consult the
8 master trainer on. For me it just seemed like an
9 easier thing to transition to.

10 Q. Okay. You say initially Spike was
11 supposed to be a bark-and-hold dog, correct?

12 A. Correct.

13 Q. What is a bark-and-hold dog versus a
14 down-en-route dog? I've not heard of a
15 down-en-route dog. What is a down-en-route dog?

16 A. Well, the difference between bark-and-hold
17 and down in route, on a bark-and-hold, during the
18 evaluation, you have a subject running from the dog.
19 The dog sees the person. You wait, you send the
20 dog, the person stops halfway between the dog
21 getting to them and decides they're going to give
22 up, they play that scenario.

23 Q. And what does the dog do in that
24 situation?

25 A. When the person stops, the dog will then

1 run up close to them and bark. A down-en-route dog
2 is --

3 Q. Meaning he will not bite and apprehend?

4 A. Not to engage the person, but to bark at
5 them --

6 Q. Okay.

7 A. -- is what they call a bark-and-hold. A
8 down-en-route is halfway there, if a person decides
9 to stop, you down the dog. He lays down halfway
10 between the person, creating more distance between
11 the suspect and the dog.

12 Q. Okay. So a down-en-route dog is supposed
13 to lay down before he ever gets to the suspect?

14 A. Correct.

15 Q. And that's how Spike was trained, to lay
16 down before he got to a suspect then?

17 A. We had begun the transition into that.

18 Q. When did you begin that type of training?

19 A. I believe it's in the training records if
20 someone wants to look. I don't remember.

21 Q. I can provide you with those training
22 records if you'd like to take a look at them?

23 A. They're here. I don't know the exact
24 date. That's only one month.

25 Q. I'm going to hand you again what has been

1 marked or Bates stamped as Defendants' 36 through
2 185, which we had previously identified as the
3 canine unit training logs. While you're looking
4 through that, I'm going to go to the restroom real
5 quick. Or I'll wait. So I see a date of 8/20/08;
6 is that correct?

7 A. Yes.

8 Q. And it's Defendants' No. 182 in the canine
9 unit training log records. And you were explaining
10 to me that a down-en-route is where the dog will
11 automatically lay down before he reaches a suspect?

12 A. No, not automatically, on command.

13 Q. Okay. On command. What happens if the
14 dog does not receive a command to go down-en-route?
15 And I take it that's a verbal command from the
16 handbook, correct?

17 A. Correct.

18 Q. Then what happens?

19 A. The dog would be corrected.

20 Q. What would happen to the suspect if the
21 verbal command to go down-en-route is not given?

22 A. I'm sorry, you didn't differentiate
23 between the training and whether this was a real
24 live scenario you were referring to.

25 Q. You train for a real life scenario,

1 correct, so there wouldn't be any difference between
2 whether it's training or real life if a command is
3 given?

4 A. My answer to you is this was not
5 completed, it had just been started. He was still
6 on a pinch collar and a long line at that time so he
7 would have received a correction. It had not been
8 instituted in the field.

9 Q. Okay. So when you were in the field with
10 Spike, past 8/20/08 -- or 8/20/08 is when you began
11 this type of training, you were still using Spike as
12 a bark-and-hold dog in the field during the
13 Gemperline incident, correct?

14 A. Correct.

15 Q. You've not implemented down-en-route in
16 the field?

17 A. No.

18 Q. So let's go back to under a training
19 scenario and a hypothetical since you were not using
20 this in the field but in a training scenario. If
21 the dog was going after a suspect and you did not
22 give a verbal command to go down, what would then
23 happen to the suspect?

24 A. The dog would apprehend.

25 Q. The dog would bite the suspect?

1 A. Correct.

2 Q. Would that then be what's called a
3 bite-and-hold dog?

4 A. Yes.

5 Q. So you were training Spike to become a
6 bite-and-hold dog as opposed to a bark-and-hold dog?

7 A. That's up for debate among the experts and
8 I am in no sense an expert. That's a fine line
9 right there.

10 Q. Okay. How so?

11 A. The reasoning for transitioning from
12 bark-and-hold is it is not practical in the field.

13 Q. Why is that?

14 A. It's not practical in the field because
15 most people do not stand as still as you can in
16 training when you're wearing a bite suit so we
17 wanted to transition away from that. So on a
18 straight runaway when the dog has a line of sight to
19 someone, typically it's not in your mind that the
20 person is going to stand there perfectly still while
21 a dog is charging at them full speed and comes
22 within five feet.

23 Q. Who decided to change Spike from a
24 bark-and-hold dog to a bite-and-hold dog?

25 A. Trainer John Patrick, Steve Dunham and

1 Kelly Hopkins.

2 Q. Are any of those a member of the
3 Springboro Police Department?

4 A. No.

5 Q. These were the guys that you just trained
6 with?

7 A. John is a trainer, Steve is a trainer and
8 owns a -- they both operate a dog training school in
9 Warren County and they're members of Miami Valley
10 Police Canine Association.

11 Q. So you on your own, then, as far as the
12 Springboro Police Department is concerned, made the
13 decision to transition Spike from a bark-and-hold
14 dog to a bite-and-hold dog, correct?

15 A. Correct.

16 Q. When the canine program was initiated at
17 Springboro, it was based upon obtaining and
18 maintaining a bark-and-hold dog, correct?

19 A. Incorrect.

20 Q. Okay. Correct me, then.

21 A. That was never specified.

22 Q. Okay. I thought you told me when you went
23 to go get Spike up at Lynnwoods Kennels, that you
24 were told to get a bark-and-hold dog; am I not
25 correct?

1 A. If I said that, I apologize. I was told
2 to get a dual-purpose dog.

3 Q. Okay. Who then made the determination to
4 get a dual-purpose, bark-and-hold dog versus a
5 bite-and-hold dog?

6 A. No one, that's just what they trained at
7 Lynnwoods.

8 Q. They only trained bark-and-hold dogs at
9 Lynnwoods?

10 A. Correct.

11 Q. Did Spike ever have problems performing as
12 a bark-and-hold dog?

13 A. Yes.

14 Q. How so?

15 A. The suspect or the decoy would break a
16 little bit before. He was very fast. He would
17 charge the decoy, and the decoy, anticipating the
18 impact of his launch on the trial, would break,
19 move, make sudden exaggerated body movements. That
20 alone, to a bark-and-hold dog, is enough to cause
21 him to bite and that's why we made the determination
22 it was easier to transition to the down-en-route.

23 Q. Okay. Were these problems that you were
24 noticing in the field with Spike or in training with
25 Spike when you decided to make this transition?

1 A. I've never had in the field an instance
2 where bark-and-hold would apply to him. It was only
3 during training.

4 Q. Okay. So you never had an instance when
5 Spike should have barked at a person prior to biting
6 that person, correct?

7 A. Never.

8 Q. So every situation that you encountered in
9 the field, Spike was trained to bite that person?

10 A. On every situation that I encountered in
11 the field where there was a track and a bite, it did
12 not pertain to anything that would do with
13 bark-and-hold. That was not trained at Lynnwoods.

14 Q. Okay. You described a bark-and-hold dog
15 for me as a dog that would approach a suspect and
16 then start to bark at that suspect, correct?

17 A. Correct.

18 Q. That's what they're trained to do, a
19 bark-and-hold dog. That dog would then sit there
20 and bark at that person unless that person made an
21 affirmative movement towards the animal or tried to
22 flee; am I correct in that?

23 A. Correct.

24 Q. So you never encountered a situation in
25 the field in which a person did not make an

1 affirmative movement toward your dog or attempt to
2 flee from your dog in which someone was bit,
3 correct?

4 A. Not the way that we train bark-and-hold,
5 no, I did not ever.

6 Q. Okay. Well, tell me how you train
7 bark-and-hold then.

8 A. Bark-and-hold was trained with a subject
9 in a bite suit standing in the middle of a field
10 running away from the dog. The orders were then
11 shouted, the dog was then sent, and the dog was
12 ordered to stand still thus giving the impression to
13 the subject that you're talking to them to stand
14 still, also giving the dog the command that it's
15 time to start breaking down, slow down, and break
16 into your bark-and-hold, stand still then, if you're
17 talking to both parties, without having to
18 differentiate your conversation or your words.

19 On a track, no commands were used
20 whatsoever except to just down the dog whenever you
21 felt like it. I was never once trained to do
22 bark-and-hold on any tracks unless I had visual
23 contact or knew this person was there.

24 Q. Okay. Under those two scenarios, the only
25 way that you would prevent a bite, if I'm

1 understanding you correctly, even with a
2 bark-and-hold dog, was to physically restrain the
3 dog from biting or order the dog down, correct?

4 A. No.

5 Q. Okay. What other way would there have
6 been?

7 A. In the situation, you have to
8 differentiate between situations for me, a track
9 versus a straight runaway, fleeing, in-sight
10 suspect.

11 Q. I was talking about a track.

12 A. In a track, there is no bark-and-hold
13 trained.

14 Q. So a bark-and-hold style does not apply to
15 a tracking situation, is that your understanding?

16 A. That is the way I was trained, yes.

17 Q. I understand that that's the way you were
18 trained. What is your understanding of that?

19 A. My understanding of that is that every dog
20 in my training group was also trained the same way
21 and that is the accepted practice.

22 Q. So it's your belief, then, that all
23 bark-and-hold dogs are trained to bite at the end of
24 a track unless commanded verbally to go down or
25 physically prevented from biting by the handler?

1 A. The dog that I have trained with and the
2 training that I received, yes.

3 Q. The canine policy that was implemented by
4 the City of Springboro when Spike came on, do you
5 know if that specified or did not specify whether or
6 not the dog be used for the City of Springboro was a
7 bark-and-hold dog or a bite-and-hold dog?

8 A. I don't know.

9 Q. Do you ever know if a bite-and-hold dog
10 versus a bark-and-hold dog was discussed prior to
11 starting the canine unit at Springboro?

12 A. No, it was not.

13 Q. Did you not learn of a bite-and-hold dog
14 versus a bark-and-hold dog until when?

15 A. When I went to train. My first, probably,
16 week of training.

17 Q. Is it true that the force of a police
18 dog's bite is between 1,200 and 2,000 pounds per
19 square inch?

20 A. I have no idea.

21 Q. Okay. Do you train the dog in biting, how
22 it bites?

23 A. We train the retention of the bite, yes.

24 Q. Okay. And by retention, is that
25 increasing bite pressure?

1 A. Not necessarily, no.

2 Q. How do you train a dog to maintain on a
3 bite?

4 A. To hold on as long as possible.

5 Q. How do you train it to do that?

6 A. By creating a situation where the dog is
7 on the decoy, the decoy is pulling away, the dog is
8 tight-lined. If the dog lets go, the dog no longer
9 gets to bite, it's put up for the day, that's the
10 end of it.

11 Q. So if the dog lets go, he's done for the
12 day?

13 A. Yes.

14 Q. I take it with an increase in bite
15 pressure, there's also, you know, higher likelihood
16 that that dog can hold on, correct, to somebody in a
17 bite suit?

18 MR. WEISENFELDER: Objection. Go ahead.

19 A. I suppose you have to ask a veterinarian
20 or scientist. I don't know about bite pressure. I
21 know about retention. And that's what I wanted him
22 to do, was retain that bite.

23 Q. Can you explain to me what a choke-off is?

24 A. Yes, it is where you use the fur saver
25 collar that was always on the dog, it never comes

1 off, to cut the dog's airway off so that he, at that
2 point, has to open his mouth.

3 Q. It's called a fur saver collar?

4 A. Yes.

5 MR. WEISENFELDER: What kind of collar?

6 A. Fur saver.

7 Q. And when a dog is deployed in the field,
8 did Spike wear a fur saver collar?

9 A. Every day.

10 Q. What is the purpose in making Spike wear a
11 fur saver collar in the field?

12 A. If the harness were to fall off, if his
13 correction collar were to fall off, if on that
14 particular night he were in an electric collar, if
15 that were to fail, there's always something to grab
16 ahold of the dog by to control his head.

17 Q. So the fur saver collar was just in case
18 everything else fell off and you needed another
19 collar to grab onto?

20 A. The fur saver collar was also just his
21 standard collar that he would use while I was out
22 breaking him, during work, to let him out of the car
23 and so on and so forth.

24 Q. And that was the collar he wore every day?

25 A. Every day.

1 Q. Even around the house?

2 A. Yes.

3 Q. When you deployed Spike in the field, what
4 other collars would he wear?

5 A. Occasionally he would wear an electronic
6 collar and occasionally he would wear what's known
7 as a pinch collar. And he almost always, in
8 addition to the fur saver, had a correction collar,
9 what some people believed to be called a choke
10 chain, which does not.

11 Q. Tell me what is the purpose of a pinch
12 collar.

13 A. Correction.

14 Q. I take it it pinches the dog's neck in
15 some way, shape or form to make it think twice about
16 what it's doing?

17 A. Correct.

18 Q. Is that the same for a corrective collar?

19 A. No, a corrective collar creates a
20 different type of sensation.

21 Q. What does a corrective collar do?

22 A. A correction collar is for a quick, sharp
23 snap of the lead across the back of the neck of the
24 dog, is where you want the correction to end up at.
25 With a pinch collar, you're elevating the level of

1 correction.

2 Q. And how about an E-collar, is that an
3 electronic shock collar?

4 A. Yes.

5 Q. And what is the purpose in that collar?

6 A. The E-collar has two purposes; number one,
7 it can create a vibrating sound that you can use for
8 very, very minor discipline, such as you want the
9 dog to respond to you faster, or it can also be used
10 as a means of long-term correction if you don't have
11 a long enough line.

12 Q. Now, Spike would only wear the E-collar
13 occasionally in the field, correct?

14 A. Actually, from the time we stopped dog
15 school and he graduated until the time that the
16 E-collar stopped working and I requested a new one,
17 he wore it.

18 Q. Okay. When did it quit working,
19 approximately?

20 A. I don't know the exact date. There was a
21 memo from me to Lieutenant Parker describing I
22 needed a new one.

23 Q. Approximately?

24 A. Late in 2007 maybe. I think it was
25 sometime around summertime.

1 Q. Was it prior to or after the Campbell bite
2 incident?

3 A. I believe it was prior to.

4 Q. Were you provided with a new E-collar?

5 A. No, I was not.

6 Q. Were you ever provided with a new
7 E-collar?

8 A. No, I was not.

9 Q. Would an E-collar be something that you
10 would deem necessary to maintain your dog in proper
11 working condition?

12 A. No, but it helped with distance.

13 Q. Would that be something that you would
14 have wanted your dog to wear in the field?

15 A. I preferred it.

16 Q. And is that due to the fact that you could
17 immediately cause a correction in your dog's
18 behavior if he was improperly performing?

19 A. It was due to the fact that I could cause
20 a correction off line.

21 Q. Meaning without a lead attached to the dog
22 physically?

23 A. Correct. Yes.

24 Q. How about the corrective collar, was that
25 worn all the time in the field or not?

1 A. Yes. Well, let me rephrase. It was not
2 used in tactical situations because it did have his
3 small badge on it and it clanged and made a lot of
4 noise, so I would take it off before all tracks.

5 Q. Okay. And a tactical situation would be a
6 track. So he would not be wearing his corrective
7 collar with his badge on it during a track, correct?

8 A. Correct.

9 Q. Any other time he wouldn't be wearing it?

10 A. Building searches, area searches.

11 Q. Basically anything but a drug search?

12 A. Yes.

13 Q. How about a pinch collar, did he always
14 where that in the field?

15 A. No.

16 Q. Did he ever wear it in the field?

17 A. No.

18 Q. That was a training purpose only collar?

19 A. Training aid.

20 Q. So it was important for you to have these
21 things, these different types of collars on Spike in
22 the field so that you could maintain control over
23 Spike, correct?

24 MR. WEISENFELDER: Objection.

25 A. I don't think I could fit all of them on

1 him at the same time.

2 Q. Okay. You just told me he wears a
3 corrective collar, an E-collar, and what was the
4 first kind of collar we talked about, the --

5 A. Pinch?

6 Q. Not the pinch, before that.

7 A. The fur saver?

8 Q. The fur saver, yeah.

9 A. But never all at the same time. He's not
10 big enough.

11 MR. WEISENFELDER: Wait until there's a
12 question.

13 Q. Okay. When Spike was deployed on a track,
14 what would he be wearing?

15 A. A fur saver and a tracking harness.

16 Q. Would he have been wearing an E-collar if
17 you would have had one past this time in 2007 when
18 it quit working?

19 A. Yes.

20 Q. So on all tracks prior to this '07 date
21 when it quit working, you had an E-collar on Spike?

22 A. He had an E-collar on every night, yes.

23 Q. How important is it that a handler has
24 complete control over his canine in the field?

25 A. Important.

1 Q. Why is it important?

2 A. To reduce the risk of injury to anyone but
3 the suspect, or if the suspect gives up and
4 complies, and to prevent accidental bites of any
5 kind.

6 Q. Okay. So you'd agree with me, then, that
7 the severity of an apprehended suspect's injuries,
8 they could be reduced or eliminated if the handler
9 has complete control over the actions of his animal?

10 MR. WEISENFELDER: Objection. Go ahead.

11 A. That would vary.

12 Q. How would that vary?

13 A. It depends on the noncompliance of the
14 suspect and his actions at the time of the initial
15 apprehension.

16 Q. But you'd agree with me that if a handler
17 has complete control over the actions of his dog, so
18 long as the subject is complying, that the injuries
19 to that suspect can be minimized, correct?

20 MR. WEISENFELDER: Objection.

21 A. As long as the suspect is complying, yes.

22 Q. Now, typically, when you're with a dog in
23 the field, a handler should be able to recall his
24 dog at any given time with a verbal command,
25 correct?

1 A. It depends on the training.

2 Q. What about with the training that Spike
3 had?

4 A. The training with Spike, we never did
5 recalls, it was either a down and you approached the
6 position of the dog. You never bring the dog away
7 from the decoy.

8 Q. Okay. So the training that you had with
9 Spike, for example, if he was on a bite and actively
10 biting a subject, he could not be recalled verbally?

11 A. He would down and you would ask the
12 suspect to step away or move away from the dog. The
13 dog always stood his ground.

14 Q. Okay. So a verbal command could be used
15 to get the dog off the bite if the dog is properly
16 responding to that verbal command, correct?

17 A. Correct.

18 Q. And that's how Spike was trained?

19 A. Yes.

20 Q. And with that same notion, with a verbal
21 command, if the dog is properly responding, you
22 should be able to prevent a bite from occurring with
23 a verbal command as well, correct?

24 A. No, the dogs were trained that if a person
25 is still resisting, no matter what you said, the

1 extent to which they were resisting, the dog would
2 always bite.

3 Q. Okay. Maybe you misunderstood my
4 question. Maybe I should have done a better job of
5 setting up the example, meaning if a bite has not
6 occurred yet. And I think you just described a
7 situation in which the bite was already occurring,
8 correct?

9 A. Yes.

10 Q. Okay. Let's say that the bite has not
11 occurred yet. A handler should be able to prevent a
12 bite from occurring with a verbal command, correct?
13 Meaning if he sees the suspect out in front and the
14 dog is headed towards the suspect, with a verbal
15 command and a properly-performing dog, you should be
16 able to prevent that bite from occurring by ordering
17 the dog, like Spike, down?

18 A. Correct.

19 Q. And with that being said, a dog that's
20 properly performing that is on a bite should be able
21 to be ordered off that bite with a down command,
22 correct, verbally?

23 A. Correct, as long as there's not excessive
24 movement or fighting from the suspect.

25 Q. Okay. If there's excessive movement or

1 fighting from the suspect, would you order the dog
2 down?

3 A. Never.

4 Q. So if the suspect was not fighting or
5 moving, you could give a verbal command to get the
6 dog down and if it was properly performing, it would
7 comply, correct?

8 A. Correct.

9 Q. Now, an oral command is different than a
10 leash command, correct?

11 A. Correct.

12 Q. Oral command is something you say to the
13 dog and the dog is supposed to respond, right?

14 A. Yes.

15 Q. What's a leash command?

16 A. A leash correction? I've never heard of a
17 leash command.

18 Q. Okay. Tell me what a leash correction
19 would be.

20 A. It's manual correction where you would
21 have the dog attached on line to your choice of
22 collar, whatever is on, and you would physically
23 correct the dog by generally a popping of the
24 collar.

25 Q. And what is the preference in the field,

1 using oral commands or leash corrections, in
2 handling your canine?

3 A. The preference would be oral.

4 Q. Is that the standard in law enforcement,
5 oral commands?

6 A. Yes.

7 Q. But a dog can also be controlled with the
8 leash, if I'm understanding you correctly?

9 A. Yes.

10 Q. And I think one of the examples that we
11 talked about is where you physically prevent the dog
12 from reaching a suspect?

13 A. Yes.

14 Q. Now, with a leash -- is there any
15 difference between a leash or a lead?

16 A. Not in my mind.

17 Q. It's basically a piece of rope attached to
18 the dog that keeps you in contact with the dog?

19 A. Yes.

20 Q. Or in my case, keeps my dog running away
21 from me.

22 A. Yes.

23 Q. If a handler is using a leash or a lead,
24 he should be able to control where that dogs goes;
25 is that a fair statement?

1 A. To a certain degree.

2 Q. How so to a certain degree?

3 A. You're never going to be able to have
4 complete control of left and right movements. You
5 will have control over forward movements. And by
6 left and right movements, I would say that it would
7 vary depending upon how much lead you have out and
8 what type of line you're working with.

9 Q. Okay. So if I'm understanding you
10 correctly, with a leash you could never control
11 Spike's left or right movement, correct?

12 A. You could by stepping to the opposite
13 direction, you could cut it off. But as a general
14 rule, I would have to draw it to show you what I'm
15 talking about.

16 Q. Let me hand you a piece of paper and a
17 pen.

18 A. If the position in the center is the
19 handler and he's posted and the line's out, or are
20 the lead, the dog can swivel back and forth
21 depending upon how much line you have out, so this
22 would vary. If you wanted to cut this distance off,
23 you would have to immediately make steps to move
24 opposite the direction that you want the dog to stop
25 unless you downed him; otherwise, he has this area

1 free to search around the pivot point.

2 MR. BRANNON: Okay. And I'm going to
3 have the court reporter mark that as an
4 exhibit. Let's call this just plain 1.

5 (Deposition Exhibit 1 was marked for
6 identification.)

7 Q. Would you give me your initials on that
8 exhibit?

9 A. (Witness complies).

10 Q. Thank you. So am I correct in stating
11 that you would have more control over your dog, as
12 handler, the shorter your lead was?

13 A. Correct.

14 Q. And with a short enough lead, you should
15 be able to prevent a dog from coming into contact
16 with any person?

17 MR. WEISENFELDER: Objection. Go ahead.

18 A. That would depend on the location of the
19 person, how close you are to the person. Obviously,
20 if you're walking over top of the person or in very
21 close vicinity, the dog is going to have some reach.

22 Q. Okay. Assuming that you aren't walking
23 over top of the person or the person isn't coming
24 towards you, you should be able to prevent that dog
25 from coming into contact with that person if the dog

1 is on the lead, correct?

2 A. Generally, yes.

3 MR. WEISENFELDER: Is this a good spot
4 for a break?

5 MR. BRANNON: Sure.

6 (OFF THE RECORD)

7 (Deposition Exhibit S5B was marked for
8 identification.)

9 BY MR. BRANNON:

10 Q. Mr. Clark, I'm going to hand you what I've
11 had marked as S5B. And these are another portion of
12 the training logs or the canine unit training logs;
13 does that sound correct to you?

14 A. Yes.

15 Q. And these have various Bates stamps at the
16 bottom of them, and these are selected ones that I
17 pulled out. And I still have the book in front of
18 you that had them all, but in the interest of saving
19 a few trees, I didn't copy the whole thing to mark
20 as an exhibit. I have in relation to what's marked
21 down at the bottom, Defendants' 75. I believe that
22 this training session took place on 5/3/06. And you
23 have a training note in there of, need to work on
24 door closed alerts?

25 MR. WEISENFELDER: What's the Bates

1 number?

2 MR. BRANNON: 75.

3 Q. It says need, to work on door closed
4 alerts, not barking enough. Can you describe that
5 training scenario for me and why Spike wasn't
6 barking enough?

7 A. I can't explain to you why he wasn't
8 barking enough, but I can explain to you that that
9 was a building search. And a door closed alert is
10 when someone's in a room and you're doing a building
11 search, the objective is for the dog to go to the
12 door where the person is located and bark at that
13 door inside the building.

14 Q. Okay. Would that be the same thing as --
15 would that fall under a bark-and-hold type
16 training --

17 A. That would be --

18 Q. -- that we talked about earlier?

19 A. That would be an alert.

20 Q. Okay. The barking at that point would be
21 an alert?

22 A. Yes.

23 Q. Is that because the dog cannot physically
24 see the person, is that the difference?

25 A. Yes.

1 Q. So if the dog was able to see the person,
2 a bark-and-hold dog should sit there and bark,
3 right?

4 A. Correct.

5 Q. I'm going to have you flip to Bates number
6 93 in this exhibit. And I believe this was some
7 training that occurred on 6/13/2006; does that sound
8 right?

9 A. Yes.

10 Q. And in there there's a note, three
11 sessions with choke-offs. Extremely impressive.
12 Most fight Spike has encountered and then it has
13 strong underlined. Can you explain that to me, what
14 was done there and what you meant by your note?

15 A. Yes, Franco Angelini is a world renowned
16 decoy trainer and he also holds many classes on
17 decoy work. He's known as one of the best decoys.
18 He was decoying my dog that day, doing the
19 aggression. And part of what he was doing was
20 putting the dog into the drive known as fight. Dogs
21 have character traits and drives. Without them, you
22 can't work the dog. Those dogs are washed. You
23 engage the fight drive in the dog to see what limit
24 the dog is willing to stand, and that is what I
25 refer to there.

1 Q. Okay. When you say those dogs are washed,
2 that means they don't make it to an assignment with
3 an officer, correct?

4 A. Correct.

5 Q. So Spike displayed these characteristics
6 where he would continue to fight and fight
7 aggressively?

8 A. He stayed on the bite even though Franco
9 was in here. I don't know if I put it, but he had
10 rolled him completely over onto his back and wrapped
11 him up to where he couldn't see and he still stayed
12 there.

13 Q. All right. Where does that say that?

14 A. I didn't think I put it, but that's what
15 happened. Those were the pictures that ended up at
16 Ace Canine.

17 Q. Okay. And Frank's the guy in the bite
18 suit during these training exercises, correct?

19 A. Yes.

20 Q. And was it his opinion or your opinion
21 that Spike was extremely impressive and that that
22 was the most fight Spike has encountered so far?

23 A. It was my opinion that was the most fight
24 he's encountered. It was his opinion that he was
25 the most impressive dog in the aggression phase.

1 Q. Okay. Meaning that once Spike got on a
2 bite, he was extremely impressed with how Spike
3 stayed on the bite?

4 A. Yes.

5 Q. And that's out of -- how many dogs were
6 there?

7 A. Hundreds.

8 Q. And this guy trains how many dogs,
9 approximately, in a year; are we talking thousands?

10 A. I don't know.

11 Q. At least a hundred at this event, though?

12 A. Yes.

13 Q. And Spike was one of the top dogs in that
14 regard?

15 A. Yes, he was.

16 Q. And there's also another note at the
17 bottom, Rob Hickman outing issues, three sessions,
18 needs work?

19 A. Yes.

20 Q. Want to explain that one?

21 A. Sticks. Mr. Hickman likes his decoys to
22 use what are called sticks, and known in the dog
23 world as sticking the dog. This stick is quite the
24 issue with Spike. He does not care for the sticks.
25 And I wanted to move away from the sticks. He

1 wanted to stay with the sticks. It was just a
2 difference of opinion and we were going to need to
3 work with the sticks a lot more.

4 Q. Are these sticks these bamboo sticks that
5 you described?

6 A. No, they're not.

7 Q. What is a stick?

8 A. The sticks are maybe, if you want to
9 guesstimate that's three feet, I guess, they're
10 about that long. They're made out of fiberglass and
11 they're used mostly by German trainers, but
12 Mr. Hickman likes to use them as well. And that is,
13 they stick the front of the dog's paws where your
14 shin might be or your forearm and they whack them
15 pretty hard and it is very painful.

16 Q. Okay. So they actually hit the dog with
17 these sticks and the purpose is to make sure the dog
18 stays on the bite?

19 A. Off.

20 Q. Off the bite?

21 A. Yes, to keep them at bay, keep them away.
22 It's very painful to the dog.

23 Q. Why would you train a dog like that?

24 A. I don't know.

25 Q. What's the purpose in hitting the dog with

1 a fiberglass stick to keep them at bay?

2 A. In that issue, what they were doing is
3 trying to invoke a bark-and-hold so that the dog, in
4 his mind, believed that he didn't want to encounter
5 that type of pain anymore, therefore, he would stay
6 at a certain distance.

7 Q. Meaning he'd stay back and bark even
8 though he was being hit on the shin with these
9 sticks, correct?

10 A. He would stay back and bark when the
11 sticking stopped.

12 Q. Okay. What would he do when he was being
13 stuck?

14 A. A lot of times Spike, in that instance
15 there, would continue the bite. He would continue
16 to try to bite.

17 Q. Okay. So Spike had some issues back then
18 with staying back and just doing barking, correct?

19 A. When being stuck, yes.

20 Q. Okay. Did he ever have any other issues
21 about staying back and barking at any other time?

22 A. It varied sometimes.

23 Q. Okay. Sometimes, like when?

24 A. If the decoy -- different decoys invoked
25 different responses. Sometimes they would not stop

1 right when they were supposed to stop. Sometimes
2 they would yell. Sometimes they would do different
3 things. It just depended on the training and who
4 was doing the decoy work really.

5 Q. Okay. Is that to say that Spike would
6 most often end up biting a decoy as opposed to
7 barking at a decoy?

8 A. No.

9 Q. Had Spike ever bitten a decoy when he was
10 supposed to bark at a decoy?

11 A. Yes.

12 Q. When did that occur?

13 A. That happened at a training session here
14 when he was being stucked. The sticks and the
15 movement of the arms of the sticks caused him to
16 engage. He didn't like the pain and it brought out
17 more fight drive in him.

18 Q. Did you ever do any remedial training past
19 this point to correct this behavior in Spike?

20 A. Yes.

21 Q. When would that have been?

22 A. Every time -- almost every Wednesday that
23 I had someone to help me within the group who would
24 decoy that I trusted as a decoy.

25 Q. Okay. And what did you do in this

1 training every week to correct this behavior? What
2 specific scenario did you set up for Spike?

3 A. To enforce the bark-and-hold, what we
4 would do is put him on a long line with a pinch.

5 Q. And how would that be detailed in your
6 training records if I were to look through these
7 training records; would it say bark-and-hold work,
8 how would you notation that?

9 A. Specifically, I don't know. You might
10 find long-line work, something to that effect, pinch
11 work. Occasionally, I would also use an E-collar.

12 Q. But all that should be detailed in these
13 reports, correct?

14 A. Yes.

15 Q. I'm going to have you flip to Defendants'
16 No. 137. This is training that occurred on
17 December 13, 2006, is what it says on the form. It
18 says, three sessions bite and out. What does that
19 indicate?

20 A. Afterwards it says, passive decoy,
21 straight decoy or straight runaway so I would
22 imagine that would have been sending the dog on a
23 bite, you're looking at the person. All this
24 training was held during the daytime. So the dog is
25 sent to apprehend a person and bite them and then

1 the dog is called off and out.

2 Q. Did you ever train with Spike at night?

3 A. Yes.

4 Q. Is there a place in these reports where
5 that would be noted, what days the training was at
6 night?

7 A. Somewhere in there. This particular
8 section you're looking at is the N.A.P.W.D.A.
9 National Workshop from 2006, and I know that those
10 were all during the day.

11 Q. Okay. Let me have you go ahead and flip
12 then to Bates No. 171. There's a notation on the
13 last line there. It says, second bite apprehension
14 was not so clean, had to flank him?

15 A. Uh-huh.

16 Q. What did you mean by that?

17 A. There was issues, and there is with a lot
18 of dogs in confined spaces in building searches, and
19 that one happened to be in the area of a closet
20 where it was dark in a confined space such as about
21 the size of a walk-in closet. And by flanking him,
22 I mean walking up and grabbing the flank of his skin
23 and squeezing it.

24 Q. Okay. Was that to get him off a bite?

25 A. Yes.

1 Q. So he would not release with verbal
2 commands?

3 A. No.

4 Q. And how was flanking him different than
5 choking him off somebody?

6 A. It's one or the other.

7 Q. It is the same term?

8 A. No, it's not. By doing a choke-off, you
9 have complete control over the head of a dog. This
10 is more discipline. Flanking is more of a
11 disciplinary tactic. Choking off is not.

12 Q. Okay. You would use both. Under both a
13 choke-off and a flank situation, you would use both
14 of those when a dog would not be responding to a
15 verbal command to release a bite, correct?

16 MR. WEISENFELDER: Could you read that
17 back, please?

18 (RECORD READ)

19 MR. WEISENFELDER: Object as to the form.
20 Go ahead.

21 A. I wouldn't use them both, no.

22 Q. Not at the same time. I'm saying you
23 could use one or the other, correct? When a dog is
24 not responding to a verbal command to come off of a
25 bite, you could either use a choke-off or a flank as

1 you've described?

2 A. In training. On the street, I would never
3 attempt to flank him.

4 Q. Why would you not attempt to flank him on
5 the street?

6 A. I would not have control of his head, and
7 it would not be on a suit, it would be on a person.

8 (Deposition Exhibit S5C was marked for
9 identification.)

10 Q. And I've handed you some more canine unit
11 training logs; does that sound correct?

12 A. Yes.

13 Q. That we've marked as Exhibit S5C, these
14 being Bates Nos. 160, 161 and 185, Defendants' Bates
15 numbers from discovery. I show that the date on the
16 first one, 160, was September 19th of 2007; does
17 that sound correct?

18 A. Correct.

19 Q. And this was the last training record I
20 found before the Campbell bite that occurred on
21 October 21, 2007. Are you aware of any other
22 training logs that exist between this one here dated
23 September 19, 2007 and the bite that occurred on
24 October 21, 2007 with Mr. Campbell?

25 A. If it's not in there, I'm not aware of it,

1 no.

2 Q. And I have before you the whole book of
3 the training logs and records that I've been
4 provided, correct? And feel free to look through
5 those at any time, but I did not find one in there
6 with the date. And that's the last one before the
7 bite; is that fair?

8 A. Yes.

9 Q. Based upon that, there was no training
10 that was performed with Spike between September 19,
11 2007 and when the bite occurred on October 21, 2007,
12 correct?

13 A. That's highly possible.

14 Q. In fact, it's probable, correct?

15 MR. WEISENFELDER: Objection.

16 A. Yes.

17 Q. And there would be nothing on the CATS, or
18 anything like that, during this training time?

19 A. No, it would not be on the CATS.

20 Q. So the last training that you had with
21 Spike prior to the bite with Campbell would have
22 been over 30 days, correct, based upon this record?

23 A. Yes.

24 Q. Then I'm going to now reference you to
25 Defendants' 185 in that exhibit. That has a canine

1 unit training log date of 9/3/2008; does that sound
2 correct, September 3, 2008?

3 A. Yes.

4 Q. That is the last training log I found on
5 the documents provided to me prior to the Chelsie
6 Gemperline bite that occurred on October 11, 2008.
7 Are you aware of any other training that occurred
8 between that date and the bite on Ms. Gemperline?

9 A. No.

10 Q. So is that to say that that was the last
11 training that Spike had prior to the bite on
12 Ms. Gemperline?

13 A. I believe so, yes.

14 Q. And that also was -- over 30 days had
15 lapsed between that training and when the bite
16 occurred, correct?

17 A. Correct.

18 Q. And I believe that you testified earlier
19 that Spike was required to train eight hours every
20 other week; is that correct?

21 A. That's correct.

22 Q. So Spike would not have been current with
23 his training prior to the Campbell or Gemperline
24 bites, correct?

25 A. Correct.

1 Q. Was anybody at the Springboro Police
2 Department aware that Spike wasn't current in his
3 training when he was out on the streets prior to the
4 Gemperline and Campbell bites?

5 A. Very aware.

6 Q. Who was aware?

7 A. Sergeant Turpin, Sergeant Zimmaro,
8 Lieutenant Parker and Lieutenant Wheeler.

9 Q. How were they made aware of this?

10 A. I made them aware.

11 Q. Tell me when and where you made them
12 aware.

13 A. Through e-mail form and memo I dictated
14 that I was not receiving from my sergeants the
15 appropriate time to train and that there were also
16 workshops that I would like to go to and that I was
17 being denied my training time to avoid overtime,
18 which was put into memo form and e-mail form. I do
19 not have the exact dates, but it was submitted to
20 both lieutenants and my sergeant.

21 Q. Okay. You rattled off here a lot of
22 people and a lot of things that occurred. If I can
23 start with the people again just so I can write and
24 go through each one of these people.

25 A. The first request was made through

1 Sergeant Turpin.

2 Q. We have Sergeant Turpin?

3 A. Yes.

4 Q. Who else?

5 A. Sergeant Zimmaro.

6 Q. Who else?

7 A. Lieutenant Parker.

8 Q. Who else?

9 A. Lieutenant Wheeler.

10 Q. So you complained to all of these people
11 that you were not getting enough training with
12 Spike, correct?

13 A. Correct.

14 Q. Go ahead and take me chronologically
15 through who you made these complaints to and when
16 and what the complaints were.

17 A. On a weekly basis I spoke to Sergeant
18 Turpin, asking him to check the schedule to see if I
19 could go to training on certain Wednesdays. He
20 never responded to me. I then took that to
21 Lieutenant Parker and then was taken, after still
22 receiving no response, to Lieutenant Wheeler.
23 Lieutenant Wheeler responded to me that I would soon
24 be afforded every possible time available to train
25 no matter what and that I would get the minimum

1 number of hours.

2 Q. When did you first start making these
3 complaints to Sergeant Turpin, Sergeant Zimmaro,
4 Lieutenant Parker and Lieutenant Wheeler?

5 A. It was over the course of probably the
6 last year and a half to two years that Spike was in
7 service.

8 Q. Was that prior to the bite incident
9 involving Mr. Campbell?

10 A. Yes.

11 Q. How long before the bite incident
12 involving Mr. Campbell did you make complaints about
13 not getting enough training with Spike?

14 A. It would have been somewhere around the
15 summertime because I had also indicated in there
16 that I would like to go to the 40-hour training for
17 the state -- I'm sorry, the N.A.P.W.D.A workshop.
18 And I indicated to Lieutenant Wheeler that I had not
19 been receiving enough training time and this would
20 be very helpful to me to attend that seminar.

21 Q. Would that have been the same seminar that
22 you took when you initially got Spike?

23 A. It's a yearly seminar, yes.

24 Q. And you had not been to any other seminar
25 since that one?

1 A. I had not.

2 Q. Approximately how long before the Campbell
3 bite, time-wise, did you first voice your complaints
4 about not getting enough training with Spike?

5 A. I know that it was during the summer.
6 That's all I can tell you. I don't know the exact
7 date.

8 Q. Approximately July, August, June, July
9 August?

10 A. It was hot, I know that. Honestly, I
11 can't tell you the date.

12 Q. And that was the first complaint that you
13 made, correct?

14 A. Correct.

15 Q. You made that verbally to Sergeant Turpin?

16 A. Yes, I did.

17 Q. Did you make that initial complaint to
18 anybody else?

19 A. When we switched shifts -- when the
20 sergeants switched shifts, I never changed my shift.
21 I talked to Sergeant Zimmaro about it.

22 Q. Okay. Was this right at about the same
23 time?

24 A. Same time period over the course of about
25 a year, yes.

1 Q. Okay. Did you only make one complaint or
2 did you make multiple complaints to your sergeants?

3 A. I don't know that you could say that those
4 were complaints. They were references that I would
5 like them to check the schedule to see if I could go
6 to that training that day.

7 Q. Okay. Did you also tell them at that time
8 that you were not getting enough training with your
9 canine?

10 A. Yes, I did.

11 Q. Do you know if they reported -- I know you
12 don't want me to call them complaints, but I don't
13 know what else to call them. Were you aware if
14 those issues were then reported up through the chain
15 of command by Sergeant Turpin and Sergeant Zimmaro
16 to either Lieutenant Parker or Lieutenant Wheeler?

17 A. I don't know if they did or not. I did.

18 Q. Okay. So when you did not get a response
19 from your sergeants, you went to whom then?

20 A. Lieutenant Parker and Lieutenant Wheeler
21 were both issued an e-mail at the same time, which
22 was around the same time I requested an E-collar,
23 too, and I don't remember the exact date of any of
24 that.

25 Q. During the time period of first complaints

1 before the Campbell bite, how many verbal -- or how
2 many times did you verbally complain to Sergeant
3 Turpin and Sergeant Zimmaro that you needed
4 additional training and that you weren't getting
5 enough training?

6 A. I mentioned it to Sergeant Turpin at least
7 once a week. I was not on Sergeant Zimmaro's shift
8 for as long as Sergeant Turpin's. And at that
9 point, I believe it was Sergeant Zimmaro I mentioned
10 it to at first and then Sergeant Turpin over the
11 course of a fairly long period that frustrated me
12 enough to support sending the e-mail to Lieutenant
13 Parker and Lieutenant Wheeler.

14 Q. So you felt it was a bad enough situation
15 to where you needed to go around your sergeant and
16 get it up the chain of command to Lieutenant Wheeler
17 then or Lieutenant Parker?

18 A. I just felt I wasn't being listened to.

19 Q. Okay. And Sergeant Zimmaro, approximately
20 how many times did you make that complaint to him
21 that you weren't getting -- I know that you weren't
22 with him as long --

23 A. Maybe two or three.

24 Q. Would that be on a weekly basis, also?

25 A. Yes.

1 Q. Were these concerns or complaints voiced
2 by you at a weekly staff meeting, just in passing,
3 under what circumstances did you make these concerns
4 known?

5 A. It could have been anytime during the
6 shift that we were both in the building at the same
7 time. I would just say, hey, can you check the
8 schedule to see if I could go to training next
9 Wednesday.

10 Q. Why was it important to you to do this
11 training?

12 A. As indicated in my e-mail, I became
13 concerned that I was falling below the standards.

14 Q. Was Spike's performance suffering because
15 he wasn't getting this training?

16 A. His drug work was definitely starting to
17 go downhill a little bit.

18 Q. Knowing that if you would have gotten this
19 training, did you feel like you'd have a better dog
20 and be a better unit in the field?

21 A. That would depend on the situation.

22 Q. Would you feel that with this additional
23 training you would have had better control of your
24 canine in the field?

25 A. You would have to be specific to the exact

1 situation.

2 Q. Just generally speaking, I mean, if you
3 didn't think that this training would make you any
4 better, you know, you wouldn't need it, right? The
5 training is designed to make you a better handler
6 and the dog a better dog, right?

7 A. That, and to conform with the state's
8 standards.

9 Q. Okay. And it's your feeling now, looking
10 back, that you probably could have been a better
11 handler and Spike could have been a better dog had
12 you got him this training?

13 MR. WEISENFELDER: Objection.

14 A. I did not say that.

15 Q. Okay. Would that be true?

16 MR. WEISENFELDER: Objection.

17 A. Again, that would be specific to the
18 individual thing that you're referring to,
19 situation.

20 Q. Do you think Spike would have been better
21 at tracking if he would have gotten this additional
22 training that you were requesting?

23 A. Not at tracking, no. I tracked on a
24 regular basis while at work.

25 Q. Do you think he would have been a better

1 bark-and-hold dog had he gotten this additional
2 training?

3 A. Yes.

4 Q. I think when we talked about some of his
5 training earlier, he had some problems with
6 bark-and-hold when we were talking about using the
7 sticks or you described them as sticks, the
8 fiberglass sticks that they would hit him on the
9 front of the shins with?

10 A. Correct.

11 Q. Would that be one of the things that this
12 training would have worked on?

13 A. No.

14 Q. Okay. But it would have included
15 bark-and-hold training as training that you were
16 requesting?

17 A. Yes.

18 Q. You mentioned that, getting back to this
19 chain of complaints and going up the chain of
20 command here, that you sent an e-mail to Lieutenant
21 Parker and Lieutenant Wheeler. Was that before or
22 after the Campbell bite?

23 A. I don't know.

24 Q. Did you ever get a response to that
25 complaint?

1 A. Yes.

2 Q. What was the response?

3 A. That I would not be allowed to go to the
4 national workshop and that they would be -- there
5 would be more attempts to get me to weekly training,
6 more emphasis.

7 Q. Did they tell you why you were denied
8 access to the national workshop?

9 A. No, they did not.

10 Q. Did you get more access to weekly
11 training?

12 A. Yes.

13 Q. How much more?

14 A. A few of the days on the schedule were
15 marked off where there were enough officers. There
16 was more, yes.

17 Q. Okay. Was there enough to get current
18 with the state minimum standards?

19 A. I'd have to go and look through all of
20 those. I don't know. I don't recall.

21 Q. Did you ever notify them that you weren't
22 getting enough training time to comply with the
23 state minimum standards meaning --

24 A. Yes, I've already told you that.

25 Q. And that was in the e-mail to Lieutenant

1 Parker and Lieutenant Wheeler?

2 A. Yes.

3 Q. As well as to Sergeant Turpin and Sergeant
4 Zimmaro?

5 A. I did not e-mail them.

6 Q. Yeah, but you told them that you weren't
7 keeping up with the state minimum standards?

8 A. Correct.

9 Q. So all four of those individuals were
10 aware that the canine unit would require more
11 training every 30 days to maintain the unit to
12 professionally performing standards and state
13 standards, correct?

14 MR. WEISENFELDER: Objection. Go ahead.

15 A. I believe you said more training every 30
16 days or did you mean more than every 30 days? I
17 didn't understand.

18 Q. You made them aware that you would require
19 more training than, let's say, once every 30 days,
20 which appears what you were getting at the time, or
21 a little bit more than 30 days, before the bite
22 periods of Gemperline and Campbell, that prior to
23 the bite involving Mr. Campbell, you made them aware
24 that that was not sufficient to -- not sufficient
25 training to maintain the canine unit, you and Spike,

1 to professionally performing levels at state minimum
2 standards, correct?

3 MR. WEISENFELDER: Objection.

4 A. Correct.

5 Q. That was a yes?

6 A. That's correct.

7 Q. You stated that you voiced complaints to
8 the sergeants and the lieutenants concerning the
9 training prior to the bite incident involving
10 Mr. Campbell, correct?

11 A. I believe I said I didn't know the exact
12 time period.

13 Q. Okay. You at least notified your
14 sergeants then. You weren't sure, though, if you
15 sent the e-mail to your lieutenants yet?

16 A. Yes.

17 Q. After the bite occurred with Mr. Campbell,
18 did anything change in regards to the training?

19 MR. WEISENFELDER: Objection. Go ahead.

20 A. No.

21 Q. Were you still voicing complaints to your
22 sergeants and your lieutenants prior to the
23 Gemperline bite incident regarding training?

24 A. Yes.

25 Q. And I think we covered up and to the

1 e-mail. What's the next step that you took after
2 that? What other complaints did you make past that
3 point?

4 A. After the e-mail?

5 Q. Yeah, after the e-mail.

6 A. Just verbal statements to the sergeant.

7 Q. Which sergeant?

8 A. At that point, Sergeant Bentley.

9 Q. Was he, then, your sergeant at that time?

10 A. Yes.

11 Q. How many times did you complain to
12 Sergeant Bentley and during what periods of time?

13 A. I only had to complain to Sergeant Bentley
14 once, and that would have been during the first
15 period of time that he was on my shift. He was very
16 good about getting me my training time.

17 Q. Okay. So what time period would that have
18 been, approximately?

19 A. I don't know. I'd have to pull the
20 schedule.

21 Q. Okay. The Campbell and Gemperline --

22 A. It would have been --

23 Q. -- they occurred about a year apart. What
24 time period in there from --

25 A. Probably right after the Mr. Campbell

1 incident, somewhere after that.

2 Q. Okay. Would that be a month, two months
3 after the Campbell incident, then, that you had
4 Sergeant Bentley come in and he sort of made sure
5 that you got more training?

6 A. Yes.

7 Q. And then prior to the Gemperline bite, who
8 was your sergeant at that time?

9 A. Sergeant prior to the Gemperline?

10 Q. The Gemperline, correct.

11 A. That would have been Sergeant Bentley
12 still.

13 Q. Okay. Sergeant Bentley still. And did
14 you voice any more --

15 A. I'm sorry, Sergeant Zimmaro.

16 Q. Okay. I apologize. When would Sergeant
17 Zimmaro have been your sergeant then after Bentley,
18 and we're still before the Gemperline bite,
19 approximately how many months before that bite
20 occurred?

21 A. They went on three-month rotations so I
22 don't know the exact time period, how long Sergeant
23 Zimmaro was there, but he was my sergeant during the
24 Gemperline incident.

25 Q. For approximately a month, two months,

1 three months prior to the bite?

2 A. I can't answer that question. I don't
3 remember.

4 Q. Okay. Did you ever complain to Sergeant
5 Zimmaro about not getting enough training?

6 A. Yes.

7 Q. On how many occasions, approximately,
8 prior to the Gemperline bite?

9 A. Mind you, I'm saying yes to what you're
10 referring to as a complaint by not knowing what else
11 to call it. I made him aware that I was not -- or
12 that I needed to go to training on certain days,
13 yes.

14 Q. Okay. Approximately how many times, prior
15 to the Gemperline bite, did you make him aware that
16 you needed additional training?

17 A. A couple, probably less than five.

18 Q. Did that do any good?

19 A. Yes.

20 Q. Was there any particular reason Spike had
21 not been to any training over 30 days before the
22 Gemperline bite then?

23 A. Manpower.

24 Q. Explain that to me, why manpower?

25 A. Training was eight hours. For me to go to

1 training and go to work, I would have had to have
2 been paid eight hours of overtime. Instead, I
3 worked the shift. If there were not enough people
4 and it was minimum manpower, I was not allowed to go
5 to training.

6 Q. Okay. So you were not permitted to go to
7 training in this 30-day period because of manpower
8 budgetary problems?

9 A. I don't know that I would say it's -- can
10 even begin to speculate whether it's budgetary
11 problems. It was an issue of manpower in terms of
12 OIC, has to be an OIC working, and there has to be a
13 minimum number of people working on the shift that
14 night.

15 Q. Okay. So there were staffing issues with
16 the department at that time to make sure that there
17 were enough people out on the street or doing their
18 jobs, correct?

19 A. Correct.

20 Q. Would that have been true as well prior to
21 the Campbell bite? Was that the reason that you
22 didn't get any training with Spike during that over
23 30-day time frame, was that -- why was that? Was
24 that because of manpower issues again or was this
25 just because your sergeants weren't letting you

1 or --

2 A. Manpower.

3 Q. Manpower. What type of system did the
4 City of Springboro Police Department have in place
5 to monitor the canine unit?

6 A. I don't know.

7 Q. Was there none?

8 A. No, not that I'm aware of.

9 Q. Nobody at Springboro ever went through
10 your training records, your training logs?

11 A. No.

12 Q. Did anybody ever request to go through
13 your training logs prior to this lawsuit?

14 A. No.

15 Q. So there was nobody monitoring the
16 performance of the canine unit; am I correct in
17 stating that?

18 A. I don't know.

19 Q. Let me ask it this way: Your sergeant
20 monitors you while you're on duty, correct?

21 A. Correct.

22 Q. Is there anybody else that monitors you
23 while you're on duty?

24 A. No.

25 Q. But there was nobody at Springboro that

1 monitored the canine unit's success rate with bites,
2 with drug searches, nothing like that?

3 A. No.

4 Q. Wouldn't you agree with me that it's
5 necessary for a police department to monitor the
6 performance of their canine unit?

7 MR. WEISENFELDER: Objection. Go ahead.

8 A. Yes.

9 Q. But nobody at Springboro was doing that?

10 A. No.

11 Q. Who was responsible for making sure that
12 the canine unit was getting everything that they
13 needed to operate in the field safely?

14 A. The operations lieutenant.

15 Q. And we've already talked about the
16 training that you didn't receive even though you
17 requested it, correct?

18 A. Yes, we have.

19 Q. And we've already talked about the
20 E-collar that you didn't receive when you requested
21 it, correct?

22 A. Correct.

23 Q. And all of that should have been provided
24 by the lieutenant operations commander?

25 A. Yes.

1 Q. Or he should have saw to it that you were
2 provided those things that you needed?

3 A. Yes.

4 Q. And was that Lieutenant Wheeler during
5 this 2007/2008 time frame?

6 A. At that time, I believe it was Lieutenant
7 Parker.

8 Q. Okay. When did it become Lieutenant
9 Wheeler?

10 A. It would have been Lieutenant Wheeler
11 before Lieutenant Parker.

12 Q. Okay. But you don't know when that change
13 occurred, approximately?

14 A. I don't remember.

15 Q. Was there anything else that you requested
16 from the City of Springboro for your canine unit
17 that you did not receive?

18 A. No.

19 Q. So you were denied a request to go to the
20 annual training put on by -- is it N.A.P.W.D.A.?

21 A. North American Police Work Dog
22 Association, yes.

23 Q. Okay. You're also denied training to go
24 with the -- is it the Miami Valley Canine?

25 A. Police Canine.

1 Q. Police Canine?

2 A. Yes.

3 Q. Okay. And that is one that you were
4 denied on a continuous basis?

5 A. Yes.

6 Q. Were you also denied the ability to go to
7 any other canine training functions besides the
8 N.A.P.W.D.A. and Miami Valley?

9 A. I didn't ask to go to any others.

10 Q. Did Springboro Police Department ever
11 require you to keep any training records or logs on
12 the dog or anything like that?

13 A. Once yearly I submitted an activity log
14 detailing, in different districts, the number of
15 calls of the different districts and differentiating
16 the types of calls that were handled in those
17 districts. And it also numbered the number of calls
18 handled for outside agencies, but that was once a
19 year to the Chief.

20 Q. Was that something specific to the canine
21 unit or did every officer have to do that?

22 A. Specific to the canine unit.

23 MR. BRANNON: I'm going to, again, make
24 an additional document request for that
25 document.

1 MR. WEISENFELDER: I think you have it.

2 MR. BRANNON: And I may. I think I know
3 what he may be referencing to. I'm just going
4 to have to go back and take a look at it.

5 Q. What type of information would the Chief
6 be able to gather from that type of a report? Would
7 he even be able to tell if a bite occurred or
8 anything like that?

9 A. Yes.

10 Q. What other information would the Chief be
11 able to garner from that annual report that you
12 would give him?

13 A. How many calls were in -- how many
14 dog-related calls, how many times Spike was deployed
15 in each individual district, the average time of day
16 for those deployments, how many times I was called
17 out from home while not at work during the day, and
18 how many physical and non-physical apprehensions
19 there were, how many building searches there were,
20 how many tracks, how many successful tracks,
21 non-successful tracks, how many area searches, how
22 many drug searches. Basically every single function
23 of the dog, he would have a complete and total
24 number as to how many usages, broken up, for the
25 year.

1 Q. Did the Springboro Police Department
2 require you to keep any records, any other records
3 concerning the dog, besides this annual report and
4 that was the only thing you were really required to
5 keep and provide to them?

6 A. Yes.

7 Q. So the canine unit training logs, that's
8 something that you did on your own?

9 A. That is something that I was trained to
10 keep by Lynnwoods Kennels.

11 Q. Okay. Was there a special kind of record
12 that you would have to prepare when you deployed
13 your canine in the field?

14 A. Yes.

15 Q. Tell me what that would be.

16 A. That would be a deployment form.

17 Q. Did the Springboro Police Department
18 require that or was that just something that you did
19 as your practice?

20 A. That was required.

21 Q. Okay. So anytime you deployed Spike in
22 the field, you had to fill out a report?

23 A. Yes.

24 Q. And that would detail the reason why you
25 deployed Spike and what happened, presumably?

1 A. Yes.

2 Q. And was there any other type of record
3 required when a bite occurred in the field or was
4 this all encompassed in the canine deployment
5 report?

6 A. That was all in the canine deployment
7 report.

8 Q. Have you heard the term bite to
9 apprehension ratio?

10 A. Yes.

11 Q. A bite ratio, as it's more commonly known?

12 A. Yes.

13 Q. What's your understanding of a bite ratio?

14 A. In terms of the number of complete
15 apprehensions that is physical versus non-physical.

16 Q. Meaning where the dog bites and apprehends
17 versus where the dog doesn't bite and an
18 apprehension is made?

19 A. Correct.

20 Q. Was there any system at Springboro for
21 monitoring the bite ratio for you and Spike?

22 A. No.

23 Q. So really, there were no internal
24 procedures for monitoring you and Spike or the
25 canine unit besides your annual report, correct?

1 MR. WEISENFELDER: Objection.

2 A. Anytime there was a bite or anything -- I
3 should say this, I was required anything above and
4 beyond a drug search that the deployment report was
5 to be printed off and turned in to the lieutenant.

6 Q. Okay. So anytime Spike was deployed not
7 for drugs, you gave the report to the lieutenant?

8 A. Yes.

9 Q. So the lieutenant presumably would have
10 been aware of when a bite apprehension was made
11 versus a building search was done?

12 A. Yes.

13 Q. Do you know if the lieutenant did anything
14 to keep track of these or monitor these?

15 A. I have no idea.

16 Q. Do you even know if he read the reports?

17 MR. WEISENFELDER: Objection. Go ahead.

18 A. I don't know.

19 Q. Did any of your supervisors at Springboro
20 have any experience with canines or canine units?

21 A. Lieutenant Parker.

22 Q. And that was where he was a handler for a
23 dog previously, correct?

24 A. Correct.

25 Q. Would you agree with the fact that because

1 a dog's responsiveness to its handler's commands may
2 erode over time, that police dogs need continual
3 training to assure that they will perform
4 consistently in the field?

5 MR. WEISENFELDER: Objection. Go ahead.

6 A. I'm an advocate of maintenance training.
7 I believe it is necessary, yes.

8 Q. Prior to the bite incident involving
9 Mr. Campbell, how many bites in field deployment did
10 Spike have?

11 MR. WEISENFELDER: Objection as to the
12 form. Go ahead.

13 A. I'd have to see the paperwork, I don't
14 know.

15 MR. BRANNON: Please mark that as S15.

16 (Deposition Exhibit S15 was marked for
17 identification.)

18 Q. Mr. Clark, I've handed you what we marked
19 as S15. Do you recognize that document?

20 A. Yes, I do.

21 Q. Have you seen that prior to today?

22 A. Yes.

23 Q. And can you tell me what that document is?

24 A. It is a letter that I wrote to Lieutenant
25 Wheeler at the request of Chief Kruithoff.

1 Q. Okay. And this references a Shane Menz.
2 It's my understanding that he was bitten by Spike
3 when he was deployed?

4 A. Yes.

5 Q. And how did this letter come about or this
6 memo or whatever you want to call it?

7 A. The Chief came to me and asked me to
8 explain to Lieutenant Wheeler, because he was new to
9 the dog deployment and biting issue at the time, if
10 I could please explain to him when it is appropriate
11 to deploy the dog.

12 Q. Okay. Was the Chief not able to explain
13 when you should deploy a dog to Lieutenant Wheeler?

14 A. I don't know.

15 Q. What was your conversation with Chief
16 Kruithoff?

17 A. Kruithoff.

18 Q. Kruithoff.

19 A. He just, I believe, sent me an e-mail
20 asking me to just very briefly, could you please
21 explain to Lieutenant Wheeler, he had asked me some
22 questions, that you would be better to answer.

23 Q. Did that imply that the Chief did not know
24 the answers to the questions about when to deploy
25 the dog, is that the sense that you got in the

1 e-mail?

2 A. No.

3 Q. Was it just your sense that Lieutenant
4 Wheeler did not know about use and deployment of a
5 canine dog?

6 A. Led me to believe that Lieutenant Wheeler
7 had less knowledge than I did at the time and that
8 he also was not as knowledgeable since he was not
9 there at the scene as I was about this particular
10 case.

11 Q. Okay. So you had to teach your
12 supervisor, presumably, about when a canine should
13 and should not be deployed in the field?

14 MR. WEISENFELDER: Objection.

15 Q. Is that a fair statement?

16 MR. WEISENFELDER: Objection.

17 A. Yes.

18 Q. And during that time, this is dated
19 8/22/06, what was Lieutenant Wheeler's position, was
20 he the operational commander, was he --

21 A. I believe he was the operations commander,
22 yes.

23 Q. And as the operations commander, he would
24 be the person right below the Chief in charge of all
25 the officers on the road, correct?

1 A. Correct.

2 Q. And in this letter it references, second
3 sentence, without having a written policy of our own
4 for the use of canine, I have utilized the
5 International Association of Chiefs of Police canine
6 policy, see attached for guidance and deployment of
7 police service dog Spike, correct?

8 A. Correct.

9 Q. Is that to say that Springboro, at that
10 point in time, never had or did not have a policy
11 for a police canine in place?

12 A. I requested from the Chief that we needed
13 to have our own policy. He did not want to do that.
14 I showed him the International Association of Chiefs
15 of Police policy. He said, that was fine, we'll
16 utilize that.

17 Q. Okay. Let me take you back to Exhibit
18 S17. S17, is that the document you're referring
19 to --

20 A. Yes.

21 Q. -- the policy you printed off the Internet
22 at Terry Fleck's website?

23 A. Yes.

24 Q. There was never any formal adoption of
25 that policy by your chief; am I correct in that?

1 MR. WEISENFELDER: Objection.

2 Q. To your knowledge?

3 A. I don't know what formal is. It was not
4 in the book, he just told me yes, to go by that.

5 Q. Okay. Let's say if somebody was presented
6 with a copy of the policies and procedures and
7 everything -- which book is the use of force
8 contained in, what would you call that, the policies
9 and procedures handbook?

10 A. Yes.

11 Q. Is just about everything contained in that
12 policies and procedures handbook?

13 MR. WEISENFELDER: Now or then?

14 MR. BRANNON: Back then.

15 A. Yes.

16 Q. If Springboro had a canine policy in place
17 prior to the Chelsie Gemperline bite, would you
18 expect to find that canine policy in that policies
19 and procedures handbook --

20 MR. WEISENFELDER: Objection.

21 Q. -- as an officer with Springboro?

22 A. No.

23 Q. Why not?

24 A. Because I know that it wasn't in there.

25 Q. Okay. But as a new officer coming on the

1 force, you were presented with a copy of that
2 policies and procedures handbook, correct?

3 A. I was shown it. I never had my own, no.

4 Q. Okay. Did Springboro ever issue a copy of
5 the policies and procedures handbook to any officer,
6 to your knowledge?

7 A. Not to my knowledge.

8 Q. It's just something that they kept,
9 correct?

10 A. Correct.

11 Q. And if you looked in that book on the date
12 of the Gemperline bite or prior to that, would you
13 have found that policies and procedures in that
14 book?

15 A. No.

16 Q. Where was this policies and procedures
17 kept, meaning S17?

18 A. The Chief had a copy and I had a copy.

19 Q. And where did you keep your copy?

20 A. In my locked file cabinet.

21 Q. You just have basically a file cabinet
22 that you kept everything about the dog in?

23 A. Yes.

24 Q. And do you know where the Chief kept his
25 copy?

1 A. I have no idea.

2 Q. But you do know that if somebody would
3 have made a public records request for the policies
4 and procedures of Springboro prior to the Gemperline
5 bite, you would not have found a canine policy in
6 that book, correct?

7 A. Correct.

8 Q. So to your knowledge, there was never an
9 official adoption of that canine policy for
10 Springboro?

11 MR. WEISENFELDER: Objection.

12 A. I don't know the answer to that. That is
13 what the Chief told me to utilize. I don't know
14 what you mean by adoption.

15 Q. Okay. Any formal incorporation of that
16 into the Springboro policies and procedures
17 handbook. Because it wasn't located in there, I'm
18 assuming there was never any adoption of that into
19 that material, correct?

20 A. Correct.

21 Q. He just said, go with it, you know. He
22 hands it -- or you hand it to him, he says, this
23 looks okay, go by this?

24 A. No, he had it for a period of time and
25 then I re-approached him about it and he informed me

1 that it would be okay to use this. He did not use
2 the exact words that you used.

3 Q. Okay. Fair enough. In regards to the
4 letter that you -- or the memorandum that you sent
5 to Lieutenant Wheeler, did you just send him a
6 letter or did you ever sit down and talk with him
7 about the dog and explain the use of force of the
8 dog regarding the Shane Menz bite?

9 A. This was the only conversation I had with
10 Lieutenant Wheeler about the Shane Menz bite.

11 Q. Okay. Do you know how many total bites
12 Spike had in his career with the City of Springboro?

13 A. I don't know the exact number.

14 Q. Does 13 sound about right?

15 A. Yeah.

16 MR. WEISENFELDER: Objection. Go ahead.

17 A. Probably.

18 Q. Do you know how many apprehensions Spike
19 had without a bite in his career with the City of
20 Springboro?

21 A. No, I don't.

22 Q. Does six sound about right?

23 MR. WEISENFELDER: Objection. Go ahead.

24 A. No. I could be wrong, but I don't think
25 so.

1 MR. BRANNON: I'd like to have that
2 marked as S14.

3 (Deposition Exhibit S14 was marked for
4 identification.)

5 Q. You've had an opportunity to flip through
6 those documents, correct?

7 A. Correct.

8 Q. And do you recognize those?

9 A. Yes.

10 Q. And can you tell me what those are?

11 A. Use of force forms on top of my usage
12 reports and narratives.

13 Q. And I'm going to represent to you that
14 those are the bite reports for Spike in every
15 deployment case in which a bite occurred. Does
16 those look to be like those reports to you?

17 A. Yes.

18 Q. And I've been provided with all of the use
19 of force reports, or what have been represented to
20 me as all of the use of force reports for yourself
21 and Spike in the field. I'm going to hand these to
22 you and identify them as Defendants' discovery
23 responses, Bates Nos. 983 through 1274. I'm going
24 to give you an opportunity to go ahead and look
25 through those. As you're flipping through those,

1 one of the questions I'm going to have for you, I
2 know that this is large stack of documents, I've
3 been through all of those, I was only able to find
4 six apprehensions without bites. If you find more
5 than six apprehensions without bites, please let me
6 know that.

7 A. That would be contained in the CATS
8 software.

9 Q. Okay. Meaning the CATS software that you
10 kept back at Springboro, correct?

11 A. Correct. It appears here, all I see is
12 bites and shooting a deer which has nothing to do
13 with Spike.

14 Q. Yeah. I believe that those were all the
15 use of force reports for you?

16 A. Yes, the use of force would not have been
17 completed on a non-bite.

18 Q. If an apprehension was made without a
19 bite?

20 A. Correct.

21 Q. Does that also contain your deployment
22 reports as well for Spike in that series of
23 documents?

24 A. There's no use of force at all or no dog
25 usage even -- this is from 2003. I don't even know

1 what this is for. There was no use of force
2 attached to it. It's just a NIBRS report for a
3 domestic.

4 Q. How would you classify that group of
5 documents then that have been provided there?

6 A. This?

7 Q. The only thing total, that whole set from
8 Bates numbers, whatever I started with there and
9 ended with. I can be more specific. Let me be more
10 specific for the record here, meaning Bates Nos. 983
11 through 1274.

12 A. I'm not really sure how you want me to
13 describe them. They start with --

14 Q. Does that --

15 A. -- the incident involving Mr. Campbell and
16 then revert back to 2003, a domestic that I was just
17 a simple witness to and then revert back to 2005.

18 Q. And, Mr. Clark, I cannot explain to you
19 why the documents are in that order. Those are the
20 order in which they were provided to me in. All I
21 know is that it contains some canine deployment
22 reports. I presume all of your canine deployment
23 reports are encompassed within that set of
24 documents. Does that seem true or not true?

25 A. I don't know. I'd have to sit here and go

1 through every page.

2 Q. And, Mr. Clark, I want to give you every
3 opportunity to do that and I want to make sure that
4 our answers here are accurate, so you take as much
5 time as you would like to go through that because my
6 question to you is, I've been through all of those.
7 I believe that they contain all of your deployment
8 reports, possibly all of your use of force reports
9 or supervisor's use of force reports for every
10 incident in which Spike was deployed, with you as
11 the handler. In that, I've counted 13 total bites
12 that occurred during the course of yours and Spike's
13 career as a canine team, and I was only able to find
14 six apprehensions that were made without bites and I
15 just want to know if that's true. Does that sound
16 true?

17 A. The number doesn't sound right to me. I
18 would have to pull up the program. And you can
19 actually have the program separate the numbers for
20 you instead of -- honestly, I don't know why Officer
21 Stewart's domestic report is in here from 2003 and
22 then a driving under suspension that I was not a
23 part of nor my dog. So making much sense of that is
24 going to be a little difficult for me.

25 Q. Let me give you another number that I

1 counted up in there. I counted 72 total deployments
2 of Spike which included drug searches, building
3 searches, article searches and all other types of
4 reasons why you would have deployed Spike as a
5 canine handler during your career. Does that sound
6 correct to you?

7 A. That sounds absolutely wrong.

8 Q. Okay. How can we get me some accurate
9 numbers then?

10 A. Have to pull from the CATS program, but
11 there were over 100 usages within one year that I'm
12 aware of. So 65 total in a career is definitely the
13 wrong number.

14 Q. Okay. How would these be able to be
15 compiled in this CATS program?

16 A. They're all listed in this form, the exact
17 same form.

18 Q. And you pointed to a canine deployment
19 report, correct?

20 A. Correct. They're all listed in that form
21 but separated by the type of usage that it is.

22 Q. Okay. So in the program, you have
23 itemized each canine deployment report, correct?

24 A. Correct.

25 Q. Within each one of those reports, there

1 should also be a corresponding written report
2 somewhere, correct, that you would have written?

3 A. Narrative such as this here?

4 Q. Yes.

5 A. Yes.

6 Q. And you're pointing to Bates number --
7 read me the Bates number.

8 A. 104701047, narrative along the
9 company's -- the deployment report, not a separate
10 report.

11 Q. Okay. Sure. It's all contained in the
12 same document, correct?

13 A. Correct.

14 Q. And are all those on the CATS system like
15 that?

16 A. Yes, they were.

17 Q. In that deployment report form?

18 A. Exact form.

19 Q. Okay. So that's the computer form on the
20 CATS program, that canine deployment report,
21 correct?

22 A. Correct.

23 Q. You just go in there, you fill in the
24 blanks, and it prints you out that report, correct?

25 A. Fill out the narrative along with filling

1 out the blanks, yes.

2 Q. Okay. Would there be any reason why they
3 wouldn't have been printed out from that program and
4 kept in a file or something like that?

5 A. The only reason that I could think of is
6 that I was only required to turn in anything over a
7 drug search.

8 Q. So is it your understanding and your
9 belief, in looking through those documents, that
10 those are not all of the canine deployment reports
11 for you and Spike?

12 A. It's my understanding that if you say
13 there's only 65 in here, then there is absolutely no
14 way whatsoever they're all in here.

15 Q. I believe 72 deployments is what I counted
16 in there.

17 A. Seventy-two, that is incorrect.

18 Q. And 13 total bites sounds about right to
19 you?

20 A. That number does, yes.

21 Q. And six apprehensions without bites?

22 MR. WEISENFELDER: I'm going to object.
23 He's answered that at least twice.

24 A. That sounds low to me.

25 Q. That sounds low to you. What number would

1 you say that would be then?

2 MR. WEISENFELDER: Object. If you can
3 answer, go ahead.

4 A. I believe it's over 10, around 10 or more.

5 Q. Okay. But you think approximately 10 is
6 where your apprehensions without bites would be?

7 A. Ten or more.

8 MR. BRANNON: And, again, we're just
9 going to make a document request for this CATS
10 program. I'm sure we'll facilitate it in some
11 way, shape or form.

12 MR. WEISENFELDER: Make the request.

13 Q. I'm going to refer you back to what was
14 marked as Springboro Exhibit 15. You had looked
15 through the S14 prior, correct?

16 A. Yes.

17 Q. And do you believe that that contains all
18 of the bite reports except for the -- or use of
19 force or deployment reports for all the incidents in
20 which you and Spike were involved where a bite
21 occurred except for the Kerns incident, the Campbell
22 incident and the Gemperline incident; does that look
23 like a complete set of those records?

24 A. The Campbell incident is right on top.

25 Q. Or, I'm sorry, Campbell is there.

1 A. Yes, I'll agree to that.

2 Q. Those appear to be true and accurate
3 copies of the deployment reports, supervisors'
4 reports that detail each of those incidents?

5 A. Yes.

6 Q. And you believe those records to be true
7 and accurate?

8 A. Yes.

9 MR. WEISENFELDER: Let me make a
10 suggestion. We're not going to finish today.
11 Why don't we plan on quitting about 5:00,
12 because I have a feeling the documents you
13 request, depending on what's there and what's
14 available may necessitate another trip back
15 anyway. And given the hour, we're not going
16 to finish today anyway.

17 MR. BRANNON: I agree.

18 MR. WEISENFELDER: My suggestion is,
19 let's just stop at 5:00 and we'll have to pick
20 another day. Is that agreeable?

21 MR. BRANNON: That's fair.

22 MR. WEISENFELDER: Let's take a break.

23 (OFF THE RECORD)

24 BY MR. BRANNON:

25 Q. Getting back to -- I believe it's S17, the

1 Springboro policy that was, I'll say, quasi adopted?

2 MR. WEISENFELDER: I'm going to object to
3 the form.

4 Q. We'll just call it S17, which was the use
5 of canine force policy that you and the Chief
6 discussed and the policy that you proposed to him.
7 Under that policy, would you agree that that policy
8 requires an officer to keep a canine on a leash and
9 under complete control at all times?

10 A. Would you tell me where you're looking?

11 Q. Let's strike that question and try this a
12 different way so we don't end up looking through
13 this document all afternoon. Do you believe that it
14 was your responsibility as a canine officer at the
15 time of both the Campbell and Gemperline bite
16 incidents to keep your canine on a leash and under
17 complete control at all times?

18 MR. WEISENFELDER: Object to the form.

19 Go ahead.

20 A. He was not required to be on a leash at
21 all times, no.

22 Q. Okay. But you were required to keep him
23 under physical control at all times?

24 A. Yes.

25 Q. When could you use or deploy your canine

1 for assisting in the arrest or prevention of the
2 escape of a person? When could you deploy your
3 canine, to your understanding, during the times of
4 both of these bite incidents?

5 A. If the person was suspected of committing
6 a felony or a crime of violence and then was
7 fleeing, arrest of officers or fleeing from the
8 officers and if the person posed a threat to
9 themselves, public or other officers, and if the
10 person was actively resisting arrest by the means of
11 evading arrest.

12 Q. Would you agree that a canine should not
13 be deployed in situations of minor complaint
14 situations?

15 A. Yes.

16 Q. Misdemeanor incidences mainly?

17 A. Yes.

18 Q. Do you believe that a canine can be
19 deployed in any felony situation?

20 MR. WEISENFELDER: Objection. Go ahead.

21 A. No.

22 Q. So your understanding is just because it
23 may be a felony situation does not mean that you
24 should deploy a canine, correct?

25 A. Correct.

1 Q. Can you give me some examples of that?

2 A. A felony theft where a loss prevention
3 officer at a store somewhere has the person stopped
4 would not be an ideal time to deploy a canine.

5 Q. Meaning when the suspect is under control,
6 correct?

7 A. Or is not fleeing, correct.

8 Q. Okay. Is there any situation, felony
9 situation, where there's a suspect who's not under
10 the care, custody and control of another where the
11 canine should not be deployed?

12 A. That could be numerous. Anytime the
13 person does not flee the scene after committing a
14 felony and evade police, that would apply.

15 Q. Okay. And what I'm trying to understand
16 here is when it is okay, or what's your
17 understanding of when it was okay to deploy a canine
18 as an officer of the City of Springboro in a felony
19 situation, how would you determine whether or not
20 you could deploy that canine or not?

21 A. If that person committing a felony, or
22 suspected of committing a felony, had fled the scene
23 and was actively evading the police by means -- I'm
24 sorry, resisting arrest by means of flight or
25 evasion.

1 Q. Is there any situation where the canine
2 should be deployed where it's involving a
3 misdemeanor offense and the person's evading the
4 police or resisting capture?

5 A. After the commission of a crime of
6 violence.

7 Q. Okay. Would a crime of violence be
8 domestic violence?

9 A. Yes.

10 Q. Would it also be assault?

11 A. Yes.

12 Q. So in a misdemeanor assault, you believe
13 that it was okay, with what you were told from
14 Springboro, to go ahead and deploy the canine,
15 correct?

16 A. If the other factors were involved, yes.

17 Q. Meaning if the person, for example, fled
18 the scene and was trying to hide?

19 A. Correct.

20 Q. Would you agree with me that a canine
21 should not be used to apprehend anyone suspected to
22 be merely under the influence of drugs or alcohol if
23 no other crime's involved?

24 MR. WEISENFELDER: Objection. Go ahead.

25 A. If no other crime is involved, yes.

1 Q. And is it your understanding -- back to
2 your use of force reports, just so we're clear on
3 this -- that every time a use of force report -- or
4 every time the canine is deployed, you have to file
5 a use of force report or not, or just a deployment
6 report?

7 A. Can you give me the first half of the
8 question again?

9 Q. Okay. Was it your understanding with the
10 City of Springboro that every time the canine was
11 deployed in the field, that you had to file a use of
12 force report or just a deployment report?

13 A. Just the deployment unless there was a
14 physical apprehension.

15 Q. Okay. And we are talking about two
16 different reports, correct?

17 A. Correct.

18 Q. They are not interchangeable terms?

19 A. No.

20 Q. Before deploying your canine for
21 Springboro, were you required to get any supervisory
22 approval to deploy your canine or was that decision
23 in your discretion?

24 A. The ultimate decision to deploy the canine
25 was left to the handler.

1 Q. Okay. Did they require you prior to that,
2 though, to get supervisor approval?

3 A. No.

4 Q. Knowing that you could overrule the
5 supervisor's decision?

6 A. If there was a supervisor on duty.

7 Q. Okay. But you were not required to get a
8 supervisor's approval prior to deploying your
9 canine?

10 A. No.

11 Q. And that's true in a track situation,
12 correct?

13 A. Correct.

14 Q. Did you get approval from any supervisor
15 prior to deploying Spike in the Campbell incident,
16 or prior to deploying Spike in the Campbell
17 situation?

18 A. No.

19 Q. Did you get any supervisor's approval
20 prior to deploying Spike in the Gemperline
21 situation?

22 A. Yes.

23 Q. Who did you get that approval from?

24 A. Sergeant Zimmaro.

25 MR. WEISENFELDER: Sergeant who?

1 THE WITNESS: Zimmaro.

2 Q. In that situation with Ms. Gemperline, did
3 Sergeant Zimmaro tell you to go get your dog or did
4 you ask if you could deploy your dog?

5 A. He told me that he needed my dog.

6 Q. And what did you understand that to mean?
7 Was that an order for you to go deploy your dog?

8 A. It was not an order, no. It was that he
9 merely needed the use of the dog.

10 Q. So was it your decision then to deploy the
11 dog in that situation with Ms. Gemperline?

12 A. After understanding why he needed the dog,
13 yes.

14 Q. Tell me about the importance of creating a
15 perimeter prior to deploying a dog in a tracking
16 situation.

17 A. The perimeter is important to keep
18 basically -- I'll try to explain this as simply as
19 possible, but what you want to do is make the person
20 go to the ground and stop. In other words, if
21 someone has a 10-minute jump on you, they run, it
22 takes you 10 minutes to get there, get the dog out,
23 you will never catch them if they don't ever stop.
24 The key is to get them to stop with the use of the
25 perimeter.

1 Q. Okay. How important is it in doing a
2 track that a perimeter is created?

3 A. Fairly important.

4 Q. Are tracks most successful when a
5 perimeter is created?

6 A. Yes.

7 Q. And in both of the Campbell and Gemperline
8 incidents, would you deem both of those a track
9 scenario?

10 A. Yes.

11 Q. And in both of those incidents, Spike was
12 released for a track, correct?

13 MR. WEISENFELDER: Objection as to --

14 Q. Is that correct, to perform a track?

15 MR. WEISENFELDER: I'll object to the
16 earlier form. Go ahead and answer the
17 question.

18 A. The dog was never released, he was always
19 on line.

20 Q. Okay. But he was -- perhaps my poor
21 choice of wording late in the day, the dog was
22 deployed to perform a track in both the Gemperline
23 and Campbell situations; is that correct?

24 A. That is correct.

25 Q. Do you know if the use of force reports

1 that were created when Spike did a bite, if they
2 were ever forwarded on to anybody when Spike
3 apprehended by way of a bite?

4 A. To anyone?

5 Q. Correct, at Springboro, at the Springboro
6 Police Department.

7 A. Yes, they had to be. A supervisor over me
8 had to first complete the use of force. I've never
9 completed a use of force. Then that supervisor
10 passed it on to the operations lieutenant who then
11 passed it to either the administrative lieutenant or
12 the Chief.

13 Q. Okay. Do you believe that that was done
14 in each of these 13 bite incidents where Spike bit
15 somebody?

16 A. Yes.

17 MR. WEISENFELDER: Is this a good place
18 to stop?

19 MR. BRANNON: Let me try to find a
20 specific document, but I think we're pretty
21 close to a good place to stop.

22 (Deposition Exhibit S9 was marked for
23 identification.)

24 Q. Let me hand you what I have marked as S9.
25 I'm going to represent to you that this is an

1 article from the Springboro Sun that was in that
2 newspaper on October 16, 2008. Are you familiar at
3 all with this article that was printed in the paper,
4 have you ever seen it before?

5 A. Yes.

6 MR. WEISENFELDER: Note an objection to
7 the article and to the fact that the -- at
8 least according to the article, it's
9 incomplete. It's not the complete article.

10 MR. BRANNON: Yeah, and I just have a
11 question.

12 Q. Apparently in this article, the reporter
13 had questioned the Chief, Kruithoff, and Kruithoff
14 responded that both you and Spike have eight hours
15 of team training once a week with other police dogs
16 from Warren County. Was that a true statement, to
17 your understanding, knowing that prior to both the
18 Campbell and Gemperline bites that there was no
19 training within that 30-day time period?

20 MR. WEISENFELDER: Objection as to the
21 characterization. Go ahead and answer.

22 A. I don't know if the Chief was aware of the
23 truth or not, but the statement is inaccurate.

24 Q. Okay. Were you ever present when the
25 Chief spoke to this reporter or this newspaper or

1 anybody from this newspaper regarding this incident?

2 A. No, I was not.

3 Q. But you do believe that that statement is
4 incorrect, correct?

5 A. Correct.

6 Q. On the dates of the October 21, 2007 and
7 October 11, 2008 dates, was Spike in good health?

8 A. Yes.

9 Q. Okay. He wasn't having any physical
10 problems or anything that would have prohibited him
11 from performing his duties, correct?

12 A. Correct.

13 MR. BRANNON: Tell you what, we're
14 reaching a stopping point, or what would be a
15 good stopping point. Let me just take two
16 minutes and talk with Sam real quick.

17 (OFF THE RECORD)

18 MR. BRANNON: Let's go ahead and break
19 for the day, knowing that we're going to
20 continue these depositions.

21 MR. WEISENFELDER: What we'll do is show
22 that the deposition has been continued in
23 progress. We'll turn the original exhibits to
24 the custody of the court reporter.

25 MR. BRANNON: And what I've requested is

1 that I'm going to continue to use the exhibits
2 hopefully for all the witnesses, that she just
3 keeps bringing them back for each one.

4 MR. WEISENFELDER: That's fine.

5 (DEPOSITION CONTINUED IN PROGRESS)

6 (Deposition concluded at 4:49 p.m.)

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10 OFFICER NICK CLARK

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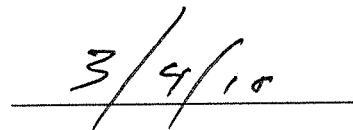
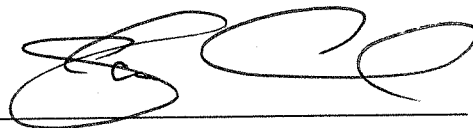
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DATE

Errata Sheet

SAMUEL A. CAMPBELL

PLAINTIFF

VS.

THE CITY OF SPRINGBORO, OHIO,
ET AL.

DEFENDANTS

DEPONENT: OFFICER NICK CLARK
DATE: FEBRUARY 4, 2010

CORRECTION

LINE

PAGE

Signature

Date

Barlow Reporting & Video Services, LLC
(859) 261-8440

1)

2 STATE OF OHIO)

3)

4 I, Mindy Davis, Notary Public for the State of
5 Ohio, do hereby certify:

6 That the witness named in the deposition, prior
7 to being examined, was by me duly sworn;

8 That said deposition was taken before me at the
9 time and place therein set forth and was taken down
10 by me in shorthand and thereafter transcribed into
11 typewriting under my direction and supervision;

12 That said deposition is a true record of the
13 testimony given by the witness and of all objections
14 made at the time of the examination.

15 I further certify that I am neither counsel for
16 nor related to any party to said action, nor in any
17 way interested in the outcome thereof.

18 IN WITNESS WHEREOF I have subscribed my name
19 and affixed my seal this 18th day of February, 2010.

20 _____

21 MINDY DAVIS

22 Notary Public

23 My Commission expires: 04/03/11

24

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